Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1260

NOEL CHANDLER and ROBERT GRANGER,

Appellants,

against

THE STATE OF FLORIDA,

Appellee.

On Appeal from the Supreme Court of Florida

Reports cited in Brief of the Attorneys General of Alabama, Alaska, Arizona, Iowa, Kentucky, Louisiana, Maryland, Montana, Nevada, New Mexico, New York, Ohio, Rhode Island, Tennessee, Vermont, West Virginia, and Wisconsin as amici curiae in support of appellee

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Contents

Judge Paul Baker, Report to the Supreme Court of Florida re: Conduct of Audio-Visual Trial Coverage

Judge Thomas E. Sholts, Report to the Supreme Court or Florida re: Conduct of Audio-Visual Trial Coverage

Judge Marvin Mounts, Jr., Report to the Supreme Court of Florida Concerning Audio-Visual Trial Coverage

STRAWN, et al., Report, In Re: Petition of Post-Newsweek Stations, Florida, Inc., for Change in Code of Judicial Conduct

Report of the Supreme Court Committee to Monitor and Evaluate the Use of Audio and Visual Equipment in the Courtroom

Washington State Superior Court Judges' Association Committee on Courts and Community, "Cameras in the Courtroom-- A Two Year Review in the State of Washington"

Washington Bench-Bar-Press Committee, Subcommittee on Canon 35, Report, April 5, 1975

Judge Guy E. Humphries, Jr., Report on Pilot Project on the Presence of Cameras and Electronic Equipment in the Courtroom

Media Advisory Committee, Interim Report to the Chief Judge of the New York State Court of Appeals, May 30, 1980

Judge Paul Baker, Report
to the Supreme Court of
Florida re: Conduct
of Audio-Visual
Trial Coverage

In the Circuit Court
Eleventh Judicial Circuit
of Florida
Criminal Division

Paul Baker, Judge

Case No. 77-25123-A

STATE OF FLORIDA

v.

RONNEY A. ZAMORA,

defendant

Report To

The Supreme Court of Florida

re:

Conduct of

AUDIO-VISUAL TRIAL COVERAGE

To:
The Honorable
The Chief Justice
And Justices Of The
Supreme Court of Florida

Pursuant to paragraph (9) of the order entered by the Supreme Court of Florida in re: Petition of Post-Newsweek Stations, Florida, Inc. for Change in Code of Judicial Conduct, Case No. 46,835, January Term, A.D. 1977, this Court is submitting a report concerning the media coverage in the trial of State of Florida v. Ronney A. Zamora, (Circuit Court Case No. 77-25123-A). A copy of the Supreme Court's order is attached hereto as Appendix A.

Although the order does not request an evaluation until one year after the pilot program, this report is submitted now because of the great public interest generated by the Zamora case which was televised in its entirety and excerpts of the trial viewed throughout the world.

In addition to worldwide television coverage, the trial was reported extensively in almost every newspaper in the United States and abroad on a daily basis. There was also extensive coverage on radio and the proceedings were published by news magazines in this and other countries. The articles that appeared in the printed media were, in most instances, accompanied by photographs taken in the courtroom during the course of the trial.

As a result, this Court has received requests for a report from the Supreme Courts of other states as well as the Subcommittee on the Constitution of the United States Senate. In addition, individual trial judges throughout the country have indicated interest in the conduct of the Zamora trial and the various news media

have expressed a desire to read this Court's evaluation of the experiment.

This report will address itself specifically to each paragraph of the Supreme Court's order entered June 14, 1977.

1. **Equipment and personnel.**

(a) One portable television camera was in the courtroom throughout the proceedings. This camera was operated by WPBT (Public Broadcasting Service) Channel 2, Miami. On no occasion was more than one camera person operating the equipment during the course of the trial.

(b) Prior to commencement of the trial the Court received a request to clarify this subsection of the Supreme Court's order inasmuch as there is a provision for two still cameras and only one still camera photographer. The issue to be clarified concerned the taking of black and white as well as color photographs. After conferring with all interested parties, this Court felt the spirit of the rule would not be violated by permitting one photographer to operate a still camera for black and white photographs and another to operate a still camera for the purpose of taking color photographs.

During the first day of jury selection, the Court observed the operator of the camera taking color photographs moving about the courtroom and he was not using a camera which met the criteria of paragraph

(2)(b) of the Supreme Court order. A further controversy arose when the photographer in question was requested to cease photographing. This was resolved by utilizing one still camera photographer with the proper equipment taking both color and black and white photographs.

(c) At the initial conference of judges and media representatives called to implement the Supreme Court's order, only one member from any of the area's radio stations appeared. There was no separate system installed in the courtroom for the purpose of radio broadcasting. There was, however, a facility for audio pickup which was made available by the WPBT, Channel 2. At no time during the course of the trial did the Court receive a request for a separate audio system for radio. Had such a request been made there would have been no problem in utilizing the existing equipment present in the Court facility.

(d) "Pooling" arrangements among the media were made well in advance of the trial; however, because there were over 60 individual media personnel from local stations and each of the major networks as well as foreign countries, it was necessary in the Court's opinion to appoint a liaison person to act as a coordinator. The network television pesonnel from out of state and the foreign media personnel were not familiar with the order of the Florida Supreme Court and it was necessary to hold a briefing session in order to familiarize everyone with the procedures to be followed. This briefing was handled by Mr. Steve Tello, News Operations Manager of WPLG TV, Channel 10, whom the Court had appointed as liasion. Any matters that required

clarification were communicated to the Court through Mr. Tello and in turn he conveyed instructions to the media from the Court.

In no instance did any member of the media attempt to bypass the Court-appointed liaison and in no instance did any member of the media fail to cooperate with instructions of the Court relayed through Mr. Tello.

2. **Sound and light criteria.**

(a) The television and audio equipment used during the course of the Zamora trial produced no distracting sound or light in the opinion of the Court. In speaking privately with the jurors at the conclusion of the trial, the Court ascertained that the presence of cameras (both still and television) was slightly distracting but not to the extent that it interfered with the jurors considering the testimony and being able to concentrate on the argument of counsel and the Court's instructions. The slight distraction according to the Jury Foreman had nothing to do with the sound of the cameras or their presence but how they might effect the defendant and his family.

(b) The still cameras used throughout the trial conformed to the specifications set forth by the Supreme Court with the single exception of the color camera employed during the first day of jury selection. That camera was a Nikon which produced a greater sound than the 35mm Leica. After the first day there was no problem concerning still camera equipment.

(c) With the exception of the Nikon camera all equipment utilized during the course of the Zamora trial was demonstrated to the Court. The Nikon camera had also been demonstrated prior to the implementation of the Supreme Court's order and was unanimously rejected by all the judges for use in the courtroom. Had the Court been aware that one of the still cameras intended to be used in this trial was, in fact, a Nikon its use would have been prohibited.

3. **Location of equipment and personnel.**

(a) The television camera was positioned in the courtroom in a location which permitted reasonable access to coverage. The camera in question was equipped with a directional microphone and care taken by the operator to avoid activating this equipment when panning over counsel table where attorneys were conferring with each other, the defendant or witnesses. The directional microphone was also turned off when there were conferences at the bench.

During the first three days of the trial the Court noticed that technical personnel and equipment were completely blocking the corridors immediately adjacent to the courtroom. Since these corridors also serve as access routes to the building's emergency exits, it was deemed necessary to allocate a separate room for technicians and equipment. A room immediately adjacent to the judge's chambers was made available and all equipment and technical personnel was moved to this area. Thereafter, the halls were not congested nor were other courts which were in session disturbed by the sound of the television monitors.

(b) The still camera photographer was positioned in a designated seat next to the television camera. With the single exception of the color photographer who appeared on the first day of trial, there was no instance where a still photographer moved about the courtroom or in any way disrupted the court proceedings. It was possible for the still camera photographer to utilize both cameras in such a manner as not to distract from the trial proceedings.

(c) Broadcast media in attendance at the trial sat in an area designated for the press and did not utilize independent facilities for broadcasting trial proceedings.

4. **Movement during proceedings.**

There was complete compliance with all provisions of paragraph (4.) of the Supreme Court order.

5. **Courtroom light sources.**

The Zamora trial took place in two different courtrooms both of which had inadequate lighting. Prior to the trial, technicians requested an opportunity to increase the light source by making certain modifications. The Court viewed these modifications on the Saturday preceding the commencement of the trial. The initial equipment employed to increase the light source was suspended from the ceiling of the courtroom and required wiring which was taped to the courtroom wall. These fixtures were extremely distractive and also generated an inordinate amount of heat. The type of equipment employed to increase the lighting within the

courtroom gave the appearance of a Hollywood sound stage and it was ordered removed prior to trial. As an alternative the technical people suggested the use of a high intensity bulb which could be placed in the existing ceiling sockets and which would produce neither glare nor heat. Approximately ten to twelve such bulbs were utilized in both courtrooms and they were neither distracting nor uncomfortable. This also eliminated the unsightly wiring.

6. **Conferences of counsel.**

As previously mentioned, great care was taken by the camera operator to avoid picking up any audio portion of attorneys conferring at counsel table. Care was also taken to avoid audio pickup of bench conferences.

7. **Impermissible use of media material.**

Discussed in Court's recommendations. (See page 20).

8. **Appellate review.**

Pursuant to the provisions of paragraph (8.), it is this Court's understanding that a trial Court order is presently before the Supreme Court having been filed by Post-Newsweek Stations, Florida, Inc. The subject matters recited in that order are of genuine concern to both the media and the Court and it is respectfully suggested the Supreme Court consider entertaining the issues raised by that order.

9. Evaluation of program.

The issue sought to be resolved in this pilot program is whether or not access to the courts through the medium of electronic media is compatible with the orderly administration of justice.

As Mr. Justice Black observed in *Bridges v. California*. 314 U.S., at 260, 86 L.Ed.192, 62 S.Ct.190, 159 ALR 1346:

> ". . . free speech and fair trials are two of the most cherished policies of our civilization, and it would be a trying task to choose between them."

The question arises whether or not unfettered access to news becomes synonymous with unfettered dissemination. If the answer to this question is in the negative, the next query is where does the authority lie to decide what will be reported and what will not.

It would appear the answer to these questions lies equally between the inherent powers of the Court and the conscience of the media.

As an example, it would be unthinkable for a child of tender years who had been the victim of a rape to be repeatedly photographed on television or in the printed media and suffer the ridicule of her classmates and friends and equally unthinkable for a trial judge to permit it. The same would apply to the victim of any sexual assault or any case involving a child.

Likewise, it would be prejudicial to the orderly administration of justice to permit the photographing of a police undercover agent or confidential informant when such action could pose a threat to the individual's life or, in the alternative, impede the efforts of law enforcement. Rather than face these issues in a confrontation between the press and the courts, the better practice would appear the media itself establish an enforceable code of ethical conduct to be adhered to by all members of their profession not inconsistent with the code of conduct imposed upon judges and lawyers.

This is not to suggest that trial judges should abdicate their authority and allow the press free rein in determining what will be reported or disseminated nor, on the other hand, should judges shed their robes and assume the role of editor, director or producer. It has been shown that in either instance abuses have resulted.

Certainly the most flagrant abuse was the trial of Bruno Hauptman[1] in 1934. However, as Chief Justice Warren Burger points out in *Nebraska Press Association v. Stuart*. 96. S.Ct.2791 (1976) at 2798:

> "Criticism was directed at the 'carnival' atmosphere that pervaded the community and the courtroom itself. Responsible leaders of press and the legal profession—including other judges—pointed out that much of this sorry performance could have been controlled by a vigilant trial judge and by other public officers subject to the control of the court."

[1] *Hauptman v. New Jersey*, 115 N.J. Law 412, 180 A.809, Cert.denied 296 U.S.649, 56 S.Ct.310 (1935)

More recently in the celebrated case of *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct.1507, 16 L.Ed.2d 600 (1966), Mr. Justice Clark cited several examples of actions that were not taken by the trial judge which amplified the prejudice arising from the publicity surrounding Dr. Sheppard's trial.

Justice Clark noted, inter alia, that the Sheppard jury was not sequestered thus exposing them to newspaper, radio and television coverage. The jurors were permitted to go their separate ways outside the courtroom without adequate directions from the trial judge not to read or listen to anything concerning the case. It was noted that the jurors were thrust into the role of celebrities by the judge's failure to insulate them from reporters and photographers. Justice Clark further noted that the numerous pictures of the jurors, with their addresses, which appeared in the newspapers before and during the trial itself exposed them to expressions of opinions from both cranks and friends. Prospective jurors also received anonymous letters that should have made the trial judge aware that the publicity seriously threatened the jurors' privacy.

Justice Clark agreed with the opinion of the Ohio Supreme Court that Dr. Sheppard's trial was conducted in the atmosphere of a "Roman Holiday", 165 Ohio St., at 294, 135 N.E.2d, at 342.

This Court was fully aware of the opinion in Sheppard v. Maxwell and took the necessary steps to avoid the problems that arose in that case. The jury was sequestered in a hotel where arrangements had been previously made to either remove or disconnect the television sets in the rooms occupied by the jurors.

The jurors were kept together during the course of the trial under the supervision of a bailiff and security personnel from the Public Safety Department. They were not permitted newspapers, magazines or radios. The jury was transported together from the courthouse to the hotel and from the hotel to the courthouse. At all times they were in the company of the bailiff and security personnel. The jurors dined together and precautions were taken to insure they did not discuss testimony or any facet of the case throughout the trial. A request from the jury made during the trial to view themselves on television with the sound turned off was denied by the Court.

Through the media liaison person, the Court instructed that no photographs of the jury be taken either entering or leaving the courthouse.

This admonition became necessary when some members of the foreign media attempted to photograph jurors and witnesses in the corridors leading to the courtroom.

The Court took the position that access to the actual trial proceedings in this pilot program was a major step in the media's favor. In exchange therefor, the media should refrain from having cameras and lights in the corridors for the purpose of photographing trial participants and eliciting interviews. In the Court's opinion what transpired in the courtroom is a factual account of the trial which is news, but what is elicited in the corridors takes on the color of editorial comment.

Further, lights and cameras in the corridors are disruptive to other courts in session and become most annoying to witnesses, jurors and some attorneys.

The Court's feeling was communicated to the media and after the first day of trial there was complete restraint exercised by all reporters from photographing or interviewing trial participants outside the courtroom.

The Courts primary concern throughout this experiment should be to avoid even the "probability that prejudice will result" and that the conduct of a trial with electronic media in the courtroom will not be "deemed inherently lacking in due process". See *Estes v. State of Texas*, 381, U.S.532, 85 S.Ct.1628, 14 L.Ed.2d, 543 (1965).

In reversing the conviction of Estes, the Supreme Court of the United States pointed out that there was an absence of any showing of prejudice. In Estes as well as Sheppard it was the trial judge's failure to give adequate instructions and admonitions as well as his failure to insulate the jury from reporters and photographers that caused the Court concern.

This concern is amplified by Mr. Justice Black's comment in *In re: Murchison*, 349 U.S.133,136, 75 S.Ct.623,625, 99 L.Ed.942 (1955) when he observed:

> " . . . our system of law has always endeavored to prevent even the *probability* of unfairness." (emphasis supplied)

The overwhelming obstacle to this pilot program lies in the United States Supreme Court's decision in Estes. It should be noted that the Estes opinion was authored by Mr. Justice Clark speaking for the majority. He was joined by his brothers Douglas, Goldberg, Harlan and Mr. Chief Justice Warren. Of these five only

the Chief Justice, together with Justices Clark, Douglas and Goldberg, were of the view that the televising of trials as well as taking still pictures in the courtroom was in and of itself prejudicial error requiring reversal.

Mr. Justice Harlan did not go that far. Although concurring in the majority opinion, Justice Harlan was careful to point out that the use of cameras in the courtroom should be judged under the circumstances surrounding Estes only.

In his concurring opinion he took great pains to point out:

> " . . . the day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process. If and when that day arrives the constitutional judgment called for now would of course be subject to re-examination in accordance with the traditional workings of the Due Process Clause."

Bearing in mind that Estes was decided June 7, 1965 (the trial having taken place in 1962), it is appropriate that we reevaluate the issue in the light of Justice Harlan's comments.

All of the Justices who concurred in the majority opinion of Estes have left the High Court. Of the four who dissented, three remain.

The day has indeed arrived when television is commonplace in our daily lives. Technical advances over the last ten years have made equipment less obtrusive and the majority of media personnel have come to view their role as the conscience of the community with greater responsibility.

It is appropriate to compare some of the specific criticisms made by Mr. Justice Clark in the Estes opinion to the case sub judice. Justice Clark made reference to the "telltale red lights" on the television cameras which would distract the jury. No such lights were present on the cameras used throughout the Zamora trial. Justice Clark felt the jurors' eyes would be fixed on the cameras rather than the witnesses. This Court took particular note of the jurors throughout the trial and such was not the case. Concern was expressed in Estes that jurors would be subject to seeing portions of the trial on television or hearing broadcast commentary. This was avoided in the instant trial as previously discussed.

Further concern was expressed that the presence of cameras would have an impact upon witnesses to the extent they would become demoralized and frightened or given to overstatement. Further concern was expressed that in the presence of cameras some witnesses would become "cocky" while other witnesses may suffer from faulty memory and the accuracy of their statements may be severely undermined. In this regard Justice Clark felt that the presence of the cameras could cause embarrassment to witnesses and impede the search for truth and cause a natural tendency toward overdramatization. He felt inquisitive strangers and "cranks" might approach witnesses on the street with

jibes, advice or demands for explanation of their testimony.

No such problems were apparent in Ronney Zamora's trial. This Court must concur with Mr. Justice Clark's concern regarding the possible violation of the rule against witnesses. The rule, of course, is discretionary but when invoked should not be violated. It is felt however the learned justice misplaced his concern when he directed it toward television and radio broadcasts. Trials of great public interest are not confined to the electronic media and are more often reported in greater detail on the printed page. The witness who would violate the rule by watching portions of a trial on television or listen to radio broadcasts is the same witness who would without hestitation devour every word in a newspaper article which he had been instructed not to read. Compliance with the rule is a matter of integrity on the part of the witness and if he violates the Court's instructions there are sufficient sanctions available to the trial judge to admonish him.

Mr. Justice Clark points out that television is particularly bad where the judge is elected and notes that such is the case in all but six states. He noted that it would be difficult for judges to remain oblivious to the pressures that the news media can bring both directly and through the shaping of public opinion.

This Court, with the deepest respect for Mr. Justice Clark, disagrees.

The judge's conduct in the course of a trial should not be screened from public scrutiny. This is especially true since the judicial branch of government is the only

bulwark that stands as a shield between the people and the executive sword. The public has a right to know whether a judge is decisive or indecisive, attentive or inattentive, courteous or rude, whether or not he can maintain control over the trial proceedings and if he appears learned or confused. To this extent it makes little difference whether the judge is observed by spectators in the courtroom or by spectators viewing television.

However, in light of this concern, this Court specifically requested that prior to the televised proceedings and intermittently throughout the telecast the station announcer caution the public that they were not to set their minds upon a determination of any issue for the reason that they were not seeing the trial in its entirety.

This admonition was also given because of Justice Clark's concern that the presence of cameras in the courtroom would have an adverse effect on the defendant. Neither the defendant nor his attorney exhibited any concern nor raised any objection to the presence of cameras in the Zamora trial.

Finally, Mr. Justice Clark addressed himself to the concern that telecasting may deprive an accused of effective counsel. He pointed out there would be distractions, intrusions into confidential attorney-client relationships and the temptation afforded by television to play to the public audience.

These concerns are real. However, as mentioned elsewhere in this report, care was taken to insure that no communications between attorney and client were broadcast or even recorded. There was never an intrusion into the attorney-client relationship.

The greater concern of an attorney sacrificing the interests of his client on the altar of counsel's personal ego is far more disturbing. But, here again, if such were the case appropriate safeguards have been built into the law for post-conviction relief. (See Florida Criminal Rule of Procedure 3.850.) In addition, such conduct on the part of an attorney would be so deplorable as to merit disciplinary proceedings by the bar and the Supreme Court.

The Estes case, which is published complete with pictures, shows the atmosphere prevailing in the courtroom was more in tune with a network television studio than a place of justice. These photographs depict not one but a battery of cameras, cables snaking across the courtroom floor and a crowd of reporters that would appear to be attending a press convention rather than a trial. All of these abuses were eliminated in this case not only by virtue of the Supreme Court order but by the excellent self-policing of the media personnel.

It is interesting to note that the Estes trial was viewed by an estimated 100,000 people according to Justice Clark; the worldwide coverage of the Zamora trial was probably viewed by several million.[2]

The conduct of the Zamora trial in this pilot experiment must be viewed as a success. This was due to the

[2]State of Florida v. Zamora was listed in T.V. Guide and local newspapers as a regularly scheduled program on WPBT (Channel 2). This trial took place during the Nielsen rating period (A. C. Nielsen Co.) and the results showed on a given evening the Zamora trial was viewed by more people than watched the Johnny Carson show during the same time period on WCKT (Channel 7) the NBC affiliate.

excellent cooperation of all press personnel involved and particularly Mr. Steve Tello who, as the Court-appointed liaison, coordinated media activities. This Court received additional assistance from Mr. Joe Averill, attorney for The Miami News, Mr. Jim Spaniola, attorney for The Miami Herald and Mr. Alan Milledge, attorney for WCKT-TV, Channel 7. Each of these attorneys conferred with the Court prior to the trial and made themselves available to explain the Supreme Court's order to all media personnel.

Recommendations

1. **Equipment and personnel.**

(a) No change recommended.

(b) In major trials such as Zamora it is suggested that two still camera operators be permitted to take photographs provided one camera person is taking black and white pictures and the other color.

(c) It is recommended the location of cameras be designated in the courtroom by the presiding trial judge rather than the chief judge of the circuit. In the Zamora trial the cameras were originally positioned directly behind counsel table and the camera microphone could pick up even the faintest whisper. This was changed on the Saturday preceding the trial by the presiding judge because the chief judge could not be located. In a circuit this size it would seem inappropriate to thrust the chief judge into the role of "assistant director" in charge of lights and cameras.

(d) In any trial of great public interest where many media personnel will be participating, it is recommended that a mandatory pretrial conference be held between the court and the press. At this conference a liaison person should be appointed to conduct all further communications between the media and the court.

2. **Sound and light criteria.**

(a) No change recommended.

(b) No change recommended.

(c) No change recommended.

3. **Location of equipment and personnel.**

(a) The same change is recommended here as in 1.(c) above.

There should be a separate room designated for television monitors and technical personnel. Permission should be granted to install telephone equipment at media expense in order not to have reporters using the telephone of judge's secretaries, bailiffs or court reporters. This procedure (except for telephones) was employed during the Zamora trial and both the press corps and the Court found such a facility to be not only very convenient, but more in keeping with the dignity and decorum expected in a Justice building. This room housed all the equipment and personnel without difficulty and the room was completely maintained by the technicians. The morning following the close of the trial the building superintendent had a crew available to clean the room, however the technical people had already removed their equipment, down to the last piece

of tape that secured the wires to the floor and walls, leaving the room in spotless condition.

(b) Again, the same change is recommended as in 1.(c) above.

(c) A specific place in the courtroom should be designated by the trial judge for all reporters in an area assigned to the "press". This permits all media personnel to be subject to directions of the bailiff or court liaison person and offers them an area of privacy where they may take notes undisturbed by surrounding spectators. This would also eliminate clashes between spectators and reporters over who has the right to sit where.

4. **Movement during proceedings.**

No change recommended.

5. **Courtroom light sources.**

This Court would again recommend the same change as in 1.(c) above.

6. **Conferences of counsel.**

No change recommended.

7. **Impermissible use of media material.**

It is the personal feeling of this Court that video tape and audio reproductions would be of great value to an appellate court in reviewing trial proceedings. The printed record standing alone does not indicate voice inflections, facial expressions, a witness's demeanor, the

demeanor of the trial judge or the conduct of counsel. It is recommended the Supreme Court reevaluate its prohibition against the use of film, video tape, still photographs and audio reproductions for the purpose of appellate review at the conclusion of this pilot program.

8. **Appellate review.**

It is respectfully recommended without comment the Supreme Court address the pending issues in the trial court order filed by Post-Newsweek Stations, Florida, Inc.

9. **Evaluation of program.**

It is not felt the Zamora trial is itself sufficient to make a final determination concerning the modification of Canon 3A(7). The Court realizes the impact of this report not only on this canon but Canon 35 of the American Bar Association as well. Therefore, in accordance with this paragraph, a final report will be submitted at the conclusion of the pilot program. It is further recommended that in any trial where television and still cameras will be present in the courtroom the trial judge order the jury sequestered if it be a jury trial. It is also recommended witnesses be given strong admonitions by the trial judge concerning their viewing of trial proceedings as well as their reading reports in the printed media.

Further, in each case covered by television and still cameras during this pilot program where there is a jury, the presiding judge should confer with the jurors at the conclusion of the trial, in camera, to elicit their comments and report them to the Supreme Court.

Finally, it is emphatically urged that strong disciplinary action be taken against any attorney or judge who solicits media coverage of a trial for personal or political motives.

Very respectfully submitted,

/s/ PAUL BAKER

PAUL BAKER
Circuit Judge
Eleventh Judicial Circuit
of Florida, Criminal Division

Appendix

IN THE SUPREME COURT

OF FLORIDA

JANUARY TERM, A.D. 1977

TUESDAY, JUNE 14, 1977

CASE NO. 46,835

IN RE: PETITION OF

POST-NEWSWEEK STATIONS,

FLORIDA, INC., FOR CHANGE

IN CODE OF JUDICIAL CONDUCT.

ORDER

Pursuant to this Court's Supplemental Interlocutory Decision filed April 7, 1977, the parties of record in the cause have submitted proposed standards of conduct and technology to govern electronic media coverage of proceedings in the courts of Florida during the one year pilot program invoked by the Supplemental Interlocutory Decision. In addition to the proposed standards, the Court has received response to the Supplemental Interlocutory Decision filed on behalf of the Chief Judge of the Eleventh Judicial Circuit of Florida

and Sunbeam Television Corporation. The Court's conferee met with a special committee of the Circuit Judges' Conference, counsel of record and other interested parties on May 21, 1977, at which time equipment was demonstrated and implementation of standards was discussed. It was unanimously recommended at the conference on May 21, 1977, that inauguration of the pilot program be postponed until July 5, 1977, to accommodate the July 4th holiday.

In the response of the Chief Judge of the Eleventh Judicial Circuit of Florida, it was recommended that the pilot program be limited in geographic scope to each of two judicial circuits. We have considered this proposal and rejected it on the basis that it would too severely limit the experience which this Court seeks to gain from the pilot program in order to reach a reasoned decision on the merits of the proposed modification of Canon 3A(7).

In implementing the pilot program and applying the standards hereinafter enunciated, the authority of the presiding judge conferred by statute, rule or common law to control the conduct of proceedings before him shall in no wise be diminished. In this regard, the same rules of law applicable to inclusion or exclusion of the press or public at particular proceedings or during the testimony of particular witnesses shall apply to the electronic media and still photographers.

In consideration of the foregoing, the following standards of conduct and technology are hereby adopted to govern electronic media and still photography coverage of judicial proceedings in Florida during the one-year pilot program commencing at 12:01 a.m. on July 5, 1977, and ending at 11:59 p.m. on June 30, 1978.

1. **Equipment and personnel.**

(a) Not more than one portable television camera [film camera — 16 mm sound on film (self blimped) or video tape electronic camera], operated by not more than one camera person, shall be permitted in any trial court proceeding. Not more than two television cameras, operated by not more than one camera person each, shall be permitted in any appellate court proceeding.

(b) Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes shall be permitted in any proceeding in a trial or appellate court.

(c) Not more than one audio system for radio broadcast purposes shall be permitted in any proceeding in a trial or appellate court. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court facility. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the chief judge of the judicial circuit or district in which the court facility is located.

(d) Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding.

In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.

2. **Sound and light criteria.**

(a) Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, such photographic and audio equipment shall produce no greater sound or light than the equipment designated in Appendix A annexed hereto, when the same is in good working order. No artificial lighting device of any kind shall be employed in connection with the television camera.

(b) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, such still camera equipment shall produce no greater sound or light than a 35 mm Leica "M" Series Rangefinder camera, and no artificial lighting device of any kind shall be employed in connection with a still camera.

(c) It shall be the affirmative duty of media personnel to demonstrate to the presiding judge adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light criteria enunciated herein. A failure to obtain advance judicial approval for equipment shall preclude its use in any proceeding.

3. **Location of equipment and personnel.**

(a) Television camera equipment shall be positioned in such location in the court facility as shall be designated by the chief judge of the judicial circuit or district in which such facility is situated. The area designated shall provide reasonable access to coverage. If and when areas remote from the court facility which permit reasonable access to coverage are provided all television camera and audio equipment shall be positioned only in such area. Video tape recording equipment which is not a component part of a television camera shall be located in an area remote from the court facility.

(b) A still camera photographer shall position himself or herself in such location in the court facility as shall be designated by the chief judge of the judicial circuit or district in which such facility is situated. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once a photographer has established himself or herself in a shooting position, he or she shall act so as not to call attention to himself or herself through further movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of court proceedings.

(c) Broadcast media representatives shall not move about the court facility while proceedings are in session, and microphones or taping equipment once positioned as required by 1. (c) above shall not be moved during the pendency of the proceeding.

4. **Movement during proceedings.**

News media photographic or audio equipment shall not be placed in or removed from the court facility except prior to commencement or after adjournment of proceedings each day, or during a recess. Neither television film magazines nor still camera film or lenses shall be changed within a court facility except during a recess in the proceeding.

5. **Courtroom light sources.**

With the concurrence of the chief judge of a judicial circuit or district in which a court facility is situated, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions are installed and maintained without public expense.

6. **Conferences of counsel.**

To protect the attorney-client privilege and the effective right to counsel, there shall be no audio pickup or broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge held at the bench.

7. **Impermissible use of media material.**

None of the film, video tape, still photographs or audio reproductions developed during or by virtue of the pilot program shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceedings.

8. **Appellate review.**

So that the Court may evaluate in depth all experiences engendered under the program at the end of one year, and to preclude appellate activity during the test year, (1) no appellate review shall be available to the electronic or still photographic media from individual orders entered by trial or appellate courts ruling upon matters arising under these standards, and (2) no appellate court shall entertain any petition by the electronic or still photographic media for extraordinary writ seeking in any way to affect such media reporting of a judicial proceeding or proceedings; provided however, that any party to this proceeding, any electronic media representative or any circuit or district court chief judge may at any time during the one-year pilot program apply to this Court, with proper notice to all parties, to amend the standards set out in this Order for the purpose of meeting unforeseen technical difficulties in their general application.

9. **Evaluation of program.**

At the conclusion of the one-year pilot program, all media participants in the program, all parties hereto, and all participating judges are requested to furnish to the Court a report of their experience under the program, so that the Court can determine whether or to what extent Canon 3A(7) shall be modified.

It is so ordered.

OVERTON, C.J., ADKINS, BOYD, ENGLAND, SUNDBERG and HATCHETT, JJ., Concur KARL, J., Concurs specially with an opinion

A True Copy

TEST:

/s/ Sid J. White
Sid J. White
Clerk Supreme Court.

KARL, J., Concurring Specially.

I concur with the majority in establishing the one-year pilot program and adopting standards of conduct and technology to govern the electronic media and still photography coverage of judicial proceedings in Florida, but I would establish far less restrictive standards.

The justification for standards is the potential for distracting noises and movements and the possibility that the electronic media reporters will have an effect on the outcome of the trials by concentrating on certain witnesses and excluding others. These are legitimate concerns, and every effort should be made to avoid any activity in the courtroom that interferes with the litigants' rights to fair trials. However, the standards promulgated by the majority go further than necessary.

PAGE 1

FILM CAMERAS — 16mm Sound on Film (self blimped)

1. CINEMA PRODUCTS	CP-16A-R	Sound Camera
2. ARRIFLEX	16mm-16BL Model	Sound Camera
3. FREZZOLINI	16mm (LW16)	Sound on Film Camera
4. AURICON	"Cini-Voice"	Sound Camera
5. AURICON	"Pro-600"	Sound Camera
6. GENERAL CAMERA	SS III	Sound Camera
7. ECLAIR	Model ACL	Sound Camera
8. GENERAL CAMERA	DGX	Sound Camera
9. WILCAM REFLEX	16mm	Sound Camera

PAGE 2

VIDEO TAPE ELECTRONIC CAMERAS

1. Ikegami	HL-77 HL-33 HL-35 HL-34 HL-51
2. RCA	TK 76
3. Sony	DXC-1600 Trinicon
3a. ASACA	ACC-2006
4. Hitachi	SK 80 SK 90
5. Hitachi	FP-3030
6. Philips	LDK-25
7. Sony BVP-200	ENG Camera
8. Fernseh	Video Camera
9. JVC-8800 u	ENG Camera
10. AKAI	CVC-150 VTS-150
11. Panasonic	WV-3085 NV-3085
12. JVC	GC-4800u

VIDEO TAPE RECORDERS/used with video cameras

1.	Ikegami	3800
2.	Sony	3800
3.	Sony	BVU-100
4.	Ampex	Video Recorder
5.	Panasonic	1 inch Video Recorder
6.	JVC	4400
7.	Sony	3800H

Judge Thomas E. Sholts,
Report to the Supreme
Court of Florida re:
Conduct of Audio-Visual
Trial Coverage

IN THE CIRCUIT COURT
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA
CRIMINAL DIVISION

Thomas E. Sholts, Judge

Case No. 77-1236 CF

STATE OF FLORIDA

v.

MARK A. HERMAN

Report to
The Supreme Court of Florida
re
Conduct of
Audio-Visual Trial Coverage

Pursuant to paragraph (9) of the opinion of the Supreme Court of Florida in re: Petition of Post-Newsweek Stations, Florida, Inc., 347 So.2d 404 (Fla. 1977), this Court submits its report concerning media coverage in the trial of State of Florida v. Mark A. Herman (Circuit Court Case No. 77-1236 CF).

HISTORY

Judicial Canon 3A(7) (formerly known as Canon 35) originated from a 1932 ABA resolution which suggested a complete ban (to prevent breaches of judicial decorum) on radio broadcasting and the taking of still photographs of judicial proceedings. Its complete history is attached as an Appendix to Justice Harlan's concurring opinion in Estes v. Texas, 381 U.S. 532 (1965). The Canon's adoption was related to excessive and spectacular media coverage of the Lindbergh kidnapping trial in State v. Hauptmann, 180 A. 809 (N.J. 1935), cert. denied 296 U.S. 649 (1935). Canon 35 was formally adopted by the ABA House of Delegates in 1937 and amended in 1952 to ban the televising of court proceedings.

Rule 3.110, Florida Rules of Criminal Procedure, presently bans broadcasting, photographing, televising and taping of criminal judicial proceedings. Florida Experimental Rule 3A(7) was taken from ABA Canon 35 and temporarily supersedes Rule 3.110.

On January 24, 1975, Post-Newsweek Stations, Florida, Inc. filed a petition for modification of Rule 3A(7) to permit use of

radio broadcasting equipment and television cameras in Florida judicial proceedings. By order entered January 28, 1976, the Florida Supreme Court permitted television coverage on a restricted basis of one criminal trial and one civil trial in the Second Judicial Circuit. Post-Newsweek Stations, Florida, Inc., 327 So.2d 1 (Fla. 1976). Consent of jurors, witnesses and parties was required. Any camera film was to be filed with the Florida Supreme Court and could not, without prior approval, be shown for public broadcast. On April 12, 1976, by interlocutory order, still photography cameras were also included.

The Second Judicial Circuit authorization was expanded (due to difficulty in obtaining agreement of all involved persons) to include the Ninth Judicial Circuit. Petition of Post-Newsweek Stations, Florida, Inc., 337 So.2d 804 (Fla. 1976). On December 21, 1976, a supplementary order granted similar authorization to the Fourth and Eighth Judicial Circuits. Having no success in obtaining all parties' consent, the Florida Supreme Court decided an involuntary experimental program was essential to a reasoned decision and, in effect, did away with the consent portion of its former order when it stated:

> "Consequently, in order to gain the experience which we deem essential to a proper final determination of this cause, it is the decision of this Court to invoke a pilot program with a duration of one year from July 1, 1977, during which the electronic media, including still photography, may televise and photograph, at their discretion, judicial proceedings,

> civil, criminal, and appellate, in all courts of the State of Florida, subject only to the prior adoption of standards with respect to types of equipment, lighting and noise levels, camera placement, and audio pickup, and to the reasonable orders and direction of the presiding judge in any such proceedings. Post-Newsweek Stations, Florida, Inc., 347 So.2d 402, 403 (Fla. 1977).

The starting date was subsequently changed from July 1, 1977, to July 5, 1977, at 12:01 a.m. ending at 11:59 p.m. June 30, 1978. A motion to extend the pilot program for an additional year was recently denied on May 11, 1978. The Florida Bar's Board of Governors on the same day, by resolution (21 in favor-8 against), instructed its counsel to oppose any effort to continue the experimental pilot program.

On June 14, 1977, the Florida Supreme Court in Post-Newsweek Stations, Florida, Inc., supra, p. 404, established standards and criteria for use of cameras and electronic recording devices in Florida's courtrooms. Operation of the cameras was subject to strict standards, and the media had no right of appeal from restrictive trial court orders during the pilot program. The standards related to: equipment and personnel; sound and light criteria; location of equipment and personnel; movement during proceedings; courtroom light sources; conferences of counsel; impermissible use of media material; appellate review; and evaluation of the program. The Florida Supreme Court also limited the number of camera and audio system operators in trial proceedings to:

a. One camera person operating not more than one television camera.

b. One photographer operating not more than two still cameras.

c. One audio system for radio broadcast.

The court also designated brands and models of cameras for courtroom use. The chief judge of each circuit was given responsibility to designate appropriate courtroom areas for placement of equipment.

During the past year, Florida's Experimental Rule has not proceeded unchallenged:

a. One criminal defendant sought a Federal Court injunction of the Experimental Rule.

b. Two criminal defendants requested the Florida Supreme Court ban cameras in trial proceedings.

c. One witness in a criminal case requested the Florida Supreme Court prohibit televising her testimony.

d. An attempt was made to bar televising the testimony of a sixteen-year-old rape victim.

Each challenge was rejected. See Briklod v. State, Fla. Sup. Ct., No. 52,499; Briklod v. Rivkind, S.D. Fla., No. 77-2148-Civ-JLK, opinion filed July 20, 1977; Wilhoit v. State, 351 So. So.2d 409 (Fla. 1977); State v. Granger, 352 So.2d 175 (Fla. 1977); State v. Bannister, ____So.2d____ (2DCA Fla. 1978), No. 78-376, opinion filed March 10, 1978; Kreusler v. Sholts, ____ So.2d____, No. 53,348; Kreusler v. Sholts, S.D. Fla., No. 78-8039 Civ-CF.

The last two mentioned cases concern this report because they arose when the widow of the deceased murder victim in the Herman trial objected to televising her testimony upon a claimed right to privacy under authority of the 9th and 14th Amendments to the U. S. Constitution and Article I, §1, Florida Constitution 1968. She sought injunctive relief in the Federal District Court and a direct Writ of Prohibition in the Florida Supreme Court. Her claims were dismissed in both instances.

The lead federal case regarding the media's presence in the courtroom is Estes, supra, although Estes was not the first case in which the United States Supreme Court addressed the issue of cameras in the courtroom. Stroble v. California, 343 U.S. 181 (1952). Most recently, both Estes and Stroble were referred to in Nebraska Press Association v. Stuart, 427 U.S. 539 (1976). See also Sheppard v. Maxwell, 384 U.S. 333 (1966) and Murphy vs. Florida, 421 U.S. 794 (1975).

An analysis of the Florida decisions as well as those of various federal and state courts is found in Attorney General Shevin's written presentation of April 8, 1978, to the American Bar Association's standing Committee on Standards for Criminal Justice.

STATE OF FLORIDA V. MARK A. HERMAN

The Herman trial was televised gavel-to-gavel by WPBT-Channel 2 (Public Broadcasting System). The proceedings were

extensively reported in most major newspapers published in Southeastern Florida, usually accompanied by still camera courtroom photographs. There was no separate radio broadcasting system installed, although a facility for audio pickup was made available by WPBT-Channel 2.

At 9:00 a.m., Monday, February 6, 1978, the trial began. Pooling arrangements for media personnel were made in advance of the trial. The court appointed Mr. R. L. Horey, Court Administrator of the Fifteenth Judicial Circuit, to serve as liaison between the media and the court. Media personnel did not attempt to bypass the court's liaison officer, and all media personnel cooperated with the court in carrying out suggestions and requests.

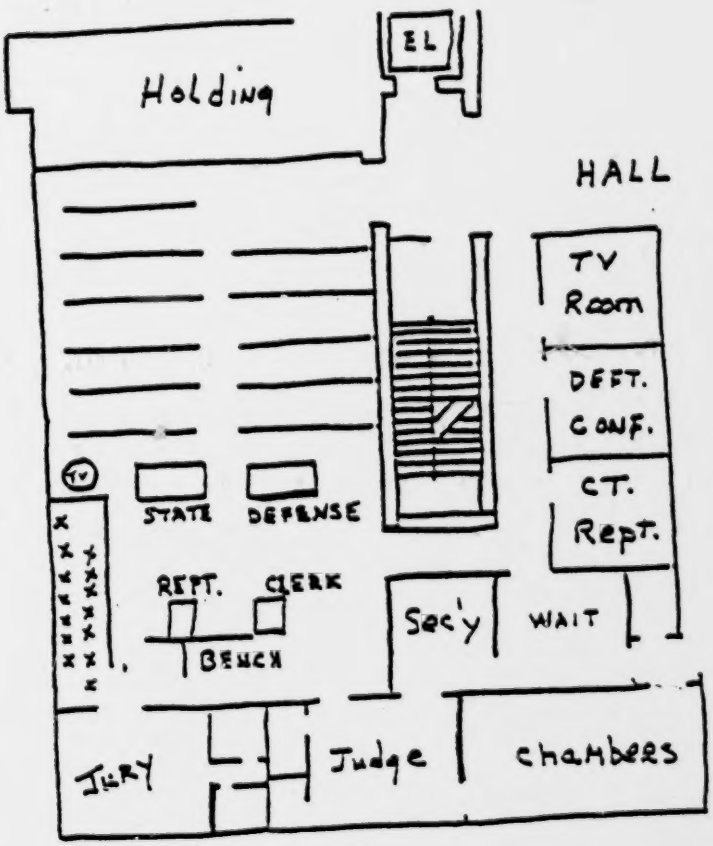
One portable television camera was used throughout the trial. The camera was operated by personnel of WPBT-Channel 2. Only one camera person manned the camera at any given time. Substitution of camera operators was done during recesses so as not to disrupt the proceedings. The court requested all microphones, including the directional microphone located on the camera, be turned off when panning counsel tables and side-bar conferences.

A room immediately adjacent to the courtroom was reserved for personnel and equipment for video and audio tape reproduction. Thus, the halls immediately outside the courtro

were not unduly congested nor were other courts in session overly disturbed by this activity.

The courtroom was not remodeled to accommodate television equipment, but additional microphones, necessary cable equipment, the television camera and required video tape reproduction equipment were installed over the weekend before the trial. The court met with media representatives on Sunday afternoon, February 5, 1978, to finally inspect and approve the installation and equipment.

The television camera was mounted on a fixed tripod base located directly to the rear of the jury box.



The camera and cables were relatively unobtrusive, but because of the configuration of the courtroom and the location of existing benches, counsel tables and seating arrangements, the camera was located much too close to the jury box.

The television and audio equipment caused no significant distractions. The trial was televised without resort to artificial lighting. Existing courtroom light was sufficient without increasing light intensity. The courtroom's air conditioning equipment caused some interference with the audio portion of the televised signal. This problem was somewhat remedied by adding, at the request of Channel 2, two microphones--one located at the bench and the other at the witness stand.

On several occasions, before and after normal court hours, the court held informal conferences with Mr. Thomas N. Donaldson, Producer/Director of WPBT, concerning such matters as the length of a given day's session and particularly with respect to the two Saturday sessions which were televised "live" rather than video tape rebroadcast. For that, it was necessary to install additional equipment (a microwave transmitter) on the courthouse roof. Arrangements were made well in advance to satisfactorily complete this work. Channel 2 personnel and the building maintenance staff of the Palm Beach County Courthouse cooperated well in installing and setting up all necessary additional equipment.

The court permitted one photographer utilizing two still cameras (with not more than two lenses for each camera) to take still photographs. These still cameras partially conformed to specifications set forth by the Florida Supreme Court. In July, 1977, the Chief Judge of this Circuit generally approved the Leica M-2, Nikon F-2 and Leica M-4-2, cameras ultimately used at the Herman trial.

A special seat was indicated for the still camera photographer who was not permitted to move about the courtroom. The news media agreed between themselves as to which still photographer would take pictures on any given day.

During the first three days of trial, the court noticed some movement by the still camera photographer (from one side of the aisle to the other) when taking pictures. As soon as the matter was brought to the photographer's attention, the movement stopped and there was no further problem. In comparison the clicking of the still photographer's camera shutter was more disruptive than the presence of the television camera. Although the court imposed no restriction on the number of still camera shots permitted, it now seems reasonable to minimize this distraction by setting a limit on the number of still camera shots taken of each witness.

The front row of public benches were reserved for media personnel which included representatives from local newspapers,

radio and television stations, and employees of the Public Broadcasting System. The court requested media personnel refrain from interviewing, photographing or conducting any activity in the hallway immediately outside the courtroom because of possible interference with the free flow of spectators, parties, attorneys, witnesses and jurors to the courtroom.

During the first week of trial, and contrary to the court's directive, a local television station (not WPBT-Channel 2) took mini-camera television shots in the hall immediately outside the courtroom. Interestingly, the court received a formal complaint about this activity from other media personnel and immediately rectified the problem by speaking with the offenders.

Thus, it must be fairly stated that the experiment of fully televising the Herman trial worked out much better than the court believed possible.

EVALUATION AND RECOMMENDATIONS

There were no histronics and no thespians, although the danger of acting for the camera will always exist. The attorneys witnesses and all interested parties were properly behaved. One witness refused to testify from fear of her safety, partially contributed to by the television's presence. The court rejected

the witness' position and held her in contempt.

The defendant objected to televising the trial on due process grounds. The court overruled his objections because of the Supreme Court's ruling temporarily suspending FRCrP 3.110. The State originally took no position either for or against televising the trial, although subsequent to the verdict, the prosecutor stated an objection on security grounds because of possible retribution against several prison inmate witnesses who testified for the State and who might not otherwise have been identified to fellow inmates except for exposure on television.

Because of excessive pretrial publicity and Channel 2's decision to televise the trial, the court decided to sequester the jury. The defendant requested the court sequester the witnesses as well. The court denied this request because there were approximately fifty named witnesses, and it was unreasonable and economically unfeasible to grant defendant's request. However, when the court invoked the witness rule, each witness was specifically directed not to watch television proceedings nor listen to radio news broadcasts, nor read any newspaper headlines or accounts concerning the trial. The inmate witnesses (housed at the Palm Beach County Jail) were not permitted to listen to any radio or television broadcasts, nor read any

newspaper accounts of the trial. This procedure was arranged and agreed to by the parties and enforced by court order.

Because of the defendant's motion to change venue (generated by excessive pretrial publicity and contributed to by Channel 2's decision to fully televise the trial), the court followed a pre-qualifying voir dire procedure by examining each juror individually away from the remainder of the jury panel and outside the presence of the television camera, although newspaper reporters and a still camera photographer were permitted to be present.

Four general areas were discussed with each juror:

a. Pretrial media publicity (most of which dealt with the defendant's extensive criminal record).

b. Juror attitudes toward television and other media coverage of the trial.

c. Jury sequestration and length of the trial (estimated at three weeks).

d. Capital punishment.

The pre-qualification process was lengthy but necessary. The court was afraid the answers of individual jurors on such sensitive matters, if made within earshot of the entire panel, might prejudice other prospective jurors by causing the formation of opinions leading to disqualification.

A panel of eighty-three jurors was individually interviewed. Thirty-five were excused for cause. Forty-eight were pre-qualified after which the voir dire examination moved from chambers to the courtroom.

The pre-qualifying procedure lasted four complete working days. The voir dire proceedings held in the courtroom took one working day. Of the thirty-five jurors discharged, fourteen were excused because of pre-conceived opinions formed by pretrial publicity; the others were excused because of attitudes about capital punishment or for hardship reasons.

The great majority of jurors interviewed during voir dire stated they preferred not to have the trial televised but would nevertheless be able to render a fair and impartial verdict. Only a few thought the idea of televising the trial and taking still photographs in the courtroom good. By the end of the trial, the sitting jurors apparently changed their views about the media's presence in the courtroom. The court, with agreement of the parties, requested each trial juror to voluntarily complete a jury survey form provided by the Department of Communication of Florida Technological University which is currently making a study of the impact of the media on courtroom proceedings. The court also asked interested courtroom personnel to fill out the same form. A synopsis of the information received as well as a sample of the survey form is attached.

The jury of twelve persons and two alternates was selected on Friday, February 10, 1978, and instructed to return home, pack belongings, and return to court on Saturday morning, February 11, 1978, when the jury was sworn and testimony began. Meanwhile, arrangements were made to lodge the jury at a local

motel whose management had been instructed to remove all television and radio sets from jurors' rooms. Sequestration was absolutely necessary to protect the record by making it impossible for jurors to watch proffers of evidence and other related matters not normally seen by the jury. The court would not have sequestered this jury except for the presence of the media in the courtroom. The expense of sequestration borne by the taxpayers of Palm Beach County (not the media) amounted to approximately $11,500 including hotel rooms, meals, overtime for round-the-clock bailiffs and jury transportation.

The verdict was rendered February 22, 1978. During the trial and directly related to the widespread public interest caused by the television coverage, the court received two bomb threats on its direct telephone line. Additionally, courthouse personnel received four other bomb threats telephoned to other departments in the courthouse. The court also received three or four other telephone messages pertaining to so-called "leads" in the case. The anonymous bomb threats necessitated several security searches of the courtroom and adjacent areas, and the "leads" necessitated investigation by the State Attorney's office and defense counsel. The bomb threats and "leads" were kept from public knowledge for security reasons.

I believe all previous objections to the media's presence in the courtroom on grounds the equipment utilized creates a

theatrical appearance no longer has merit, although to minimize the possibility of distraction and prejudice, courtrooms should be remodeled to include a booth for media personnel and equipment. The portable television camera was compact and relatively unobtrusive. As previously noted, the proceedings were more disrupted by the clicking shutter of the still photographer's camera which was most noticeable during the pre-qualifying voir dire proceedings but obvious as well in the courtroom. There were no Kleig lights present and care was taken to hide television cables. The transmitting truck was parked on the public sidewalk immediately adjacent to the northwest door of the courthouse. Necessary cables from the truck were strung through the stairwell to the fourth floor courtroom. The cables were visible but care was taken to protect the safety of persons using the stairs.

The media claims the right to take still photographs, to tape and broadcast testimony and to televise trials because it wishes to educate the public. I doubt the intellectual integrity of the media's position in making its request to change Canon 3A(7). To my knowledge, no civil proceeding has been fully televised in Florida during the one-year experimental period. The reported challenges to the proposed amended rule pertain only to criminal cases, particularly those dealing with lurid murder and sex offenses. As Mr. Herb Sites,

an editorial writer for the Palm Beach Times, amply pointed out March 6, 1978:

> "I do have doubts, though, of the value of TV trial coverage as an educational aid to the public. True, in the Herman trial airing, many people saw for the first time how a murder case is actually conducted. This one had some of the elements of the more lurid TV dramatizations viewers have been fed in the past. But it could hardly be considered a fair sample of the day-to-day operation of our courts of justice.
>
> Perhaps 90 per cent of our normal court proceedings are deadly dull. No rating-hungry TV station or network would dare make them daily fare for their viewers. It is logical to assume that even if the court camera ban is permanently removed, TV coverage would be offered only on the most sensational trials. And that would provide more 'Roman circuses' than education."

When a defendant's problems become entertainment for the public, the trial takes on a different form than an orderly search for the truth. The chief function of our judicial trial machinery is to ascertain the truth. The use of television does not materially contribute to this objective. Its use amounts to injection of irrelevant factors into court proceedings. Trials are open to the public if the public desires to attend. Permitting the media to televise trials and take still camera photographs during courtroom proceedings creates unnecessary problems at the risk of great possible prejudice. As previously noted, the adoption of Canon 35 was directly related to media excesses in the Hauptmann case, supra. Those excesses have happened in many other reported

cases, and there is no reason to believe the media's behavior will improve in the future. The gathering of sensitive news is dependent upon strong pressure to "get the scoop" or "beat the competition", and therein lies the problem. The zeal of competition will cause repetition of past excessive behavior. After the trial, the media asked the court about its opinion concerning the cameras' presence in the courtroom. When the court indicated it did not favor televising trials, the media's response was publication of the attached caricature.

I am opposed to televising criminal trials for the reasons noted in Estes v. Texas, supra, as well as others:

1. The potential impact of television on jurors is significant. As soon as the public knows a case will be fully televised, it becomes a "cause celebre". The entire community (including prospective jurors) becomes interested in all morbid details about the matter. As happened in the Herman case, the trial immediately assumes an immensely important status in the press, and the accused is highly publicized along with the gory details of the offense. Realistically, it is only the notorious trial which will be fully broadcast. The conscious or unconscious effect this may have on any given juror's judgment is questionable, but experience indicates it is not only possible but highly probable it will have a direct bearing on a juror's vote. Where pretrial publicity creates

Post Times March 1, 1978 — Letters to the Editor

intense public feeling, aggravated by telecasting of a trial, the televised jurors cannot help but feel the pressures of knowing that friends, neighbors and the public are watching. I believe jurors may very well be distracted by the presence of the television camera because jurors are aware of the fact of telecasting, and to some extent most people are self-conscious when being televised.

2. The quality of testimony in criminal trials may be impaired. The impact upon a witness who knows he or she is being viewed via television by a vast audience is simply incalculable. Some may be demoralized and frightened, some cocky and given to overstatement, memories may falter, accuracy of testimony may be severely undermined and embarrassment may impede the search for the truth as may a natural tendency of over-dramatization.

3. Invocation of the witness rule is frustrated. Unless the witnesses are sequestered, they are able to view broadcasts of the day's trial proceedings, notwithstanding an admonition not to do so. They can view and hear the testimony of proceedings and other witnesses and so shape their testimony as to make its impact crucial. Also, the mere fact the trial is televised may render witnesses reluctant to appear and testify, thereby impeding the trial.

4. Additional responsibilities are directly placed upon

the trial judge. He or she has the responsibility of maintaining the integrity of the trial, protecting the due process rights of the participants and making sure the accused receives a fair trial. When television and still camera photographers come into the courtroom, the judge must also supervise that presence and spend a great deal of time on unwarranted ancillary matters.

5. The impact of courtroom television on a defendant is extremely important. The inevitable closeups of his or her gestures and expressions may overcome personal sensibilities, dignity and the ability to concentrate--sometimes the difference between life and death. A defendant is entitled to his or her day in court which should not become a television sound stage or a movie set.

The television camera is a powerful weapon. Its coverage must from technological and fiscal necessity be selective--that is, edited. Total television coverage of all trials all the time is technically possible but economically impossible. Editing is therefore essential and inevitable, and the editing is the prerogative of the media. Editing is difficult without value judgment. No mechanics presently exist for media portrayal of the value judgments of the judicial system independent of the value judgment of the media. The power to portray certain trials or certain portions while not portraying

other trials or other portions is the power to distort the effects of the administration of justice. Unintentionally or otherwise, there is the potential of destroying a defendant and his or her case in the eyes of the public. As previously mentioned, the camera invariably focuses upon the unpopular or infamous accused. Obviously, public sentiment can affect trial participants, and the real unknown is the possibility of prejudice to criminal defendants in such instances.

6. Because of excessive pretrial publicity and the media's presence in the courtroom, the voir dire process takes much longer which unnecessarily prolongs the trial.

7. An important State's witness in the Herman trial was granted a change of venue in his subsequent trial for first degree murder based upon excessive pretrial publicity, attributable to his television exposure.

8. Counsel for the co-defendant of Ronny A. Zamora received permission to voir dire Grand Jurors who would be considering an amended indictment for murder because the original indictment had been dismissed on technical grounds. This situation presents a case of first impression in Florida, directly attributable to the television coverage of the Zamora trial and opens a Pandora's box of new problems for the court.

9. Gavel-to-gavel television coverage is expensive. As

previously noted, jury sequestration in the Herman trial cost the taxpayers approximately $11,500. This cost should properly be borne by the media and not by the taxpayers of Palm Beach County.

10. The presence of the media in the courtroom unnecessarily gives each defendant another ground for reversal should there be a conviction, which adds additional burdens to an already clogged and overworked appellate court system.

I therefore recommend that Canon 3A(7) and FRCrP 3.110 not be amended.

If the Supreme Court decides to amend the Canon and rule, I then recommend:

a. No amendment unless and until further studies are made to determine whether or not the presence of television and still photography cameras is prejudicial to defendants in criminal cases.

b. Strict regulation of the media be imposed.

c. The Supreme Court require the media pay all reasonable costs necessarily incurred as a result of its presence in the courtroom, which should include remodeling alterations, jury and witness sequestration expenses, salary charges for overtime of bailiffs and court personnel and related charges.

d. The Supreme Court grant the trial court judge full and complete discretion to deal with particular problems on a case-to-case basis.

Respectfully submitted,

Thomas E. Sholts

OPINION SURVEY

This research project is being conducted by the Department of Communication of Florida Technological University, in cooperation with the court. Our purpose is to secure information which will, hopefully, help us improve our court system. We are asking you to please fill out the following questionnaire. Your cooperation is voluntary and not in any way required by the court. We do deeply appreciate your time and effort. We do not need your name so do not sign this form; we respect your right to privacy.

DATE: _____

Check the Appropriate Box

[9] Female [9] Male

Age: [ ] Under 20 [4] 21-31 [2] 31-40 [III] over 40

1. I participated in this trial in the following way:

[I] Judge	[ ] Defendant
[ ] Defense Attorney	[2] Spectator
[I] Prosecuting Attorney	[I] Court Reporter
[ ] Witness for the Defense	[2] Bailiff
[ ] Witness for the Prosecution	[ ] Court Clerk
[III] Juror	

2. I <u>was</u> [16] <u>was not</u> [2] aware before coming to this trial that television and still cameras were going to be permitted in the courtroom.

   <u>NOTE</u>: For the following statements, check the point on the scale over the words which best describe how you feel about the statement. Indicate your feelings for both the television and still cameras.

3. As a participant or observer in this trial, I found the presence and use of the television and still cameras to be very distractive. (One juror said clicking noise was distracting, and one of the court personnel remarked about the "loud shutter".)

Television Camera:		2	1	8	7
	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Still Camera:	2	2	2	9	3
	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree

4. As a participant or observer in this trial, I believe the presence and use of the television and still cameras to be fair to the defendant.

Television Camera:	5	4	6	2	1
	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Still Camera:	4	6	6	1	1
	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree

5. As a participant or observer in this trial, I believe the presence and use of the television and still cameras to be fair to the witnesses.

Television Camera:	5	4	4	2	3
	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Still Camera:	5	3	5	2	3
	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree

6. As a participant or observer in this trial, I believe the presence and use of the television and still cameras interfer with the conduct of the trial.

Television Camera:		3	1	9	5
	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Still Camera:		2	4	9	3
	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree

7. As a participant or observer in this trial, I believe the presence and use of the television and still cameras in the courtroom are in the best interest of the public.

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Television Camera:	5	5	1	4	3
Still Camera:	4	8	3	1	2

8. As a participant or observer in this trial, I found the presence and use of the television and still cameras in the courtroom made me feel tense.

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Television Camera:		3		11	4
Still Camera:		3	1	9	5

9. In my opinion the presence and use of the television and still cameras in the courtroom is a desirable practice.

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Television Camera:	3	6	4	3	2
Still Camera:	3	8	4	2	1

10. In my opinion, the presence and use of television and still cameras in the courtroom inhibited the testimony of witnesses.

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Television Camera:	2	2	3	7	4
Still Camera:	1	3	3	8	3

11. In my opinion the presence and use of television and still cameras in this trial had an intimidating effect on the judge.

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Television Camera:			1	7	10
Still Camera:			1	7	10

12. In my opinion the presence and use of television and still cameras in this trial did not affect the courtroom behavior of the attorneys in any way.

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Television Camera:	4	7	3	4	
Still Camera:	5	8	2	3	

13. In my opinion, the presence and use of television and still cameras in the courtroom in this trial caused the jurors to be distracted.

	Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree
Television Camera:		1	4	8	5
Still Camera:		4	4	5	5

NOTE: Please place additional comments below.

☒ Check here if you have had previous experience with television or still cameras in the courtroom.

Additional Comments:

1. "I felt that the camera overemphasized the role of the attorneys in the trial and gave too little weight to the evidence. Human beings catch the eye of the TV viewers more than a piece of evidence. This tends to make the best speaker the winning attorney in the estimation of the audience. This is the opinion of most of my friends.

"As a juror I felt the witnesses, lawyers and jurors were ever aware of the presence of the camera and at times reacted just for TV."

2. "I feel that a trial that is televised in its entirety tends to be misleading to the public. Despite warnings, the public still bases its opinion on what it saw and heard and closes the mind as to what the jury saw and heard."

3. "I can only speak for myself--I heard no juror say they were distracted by the television camera. I feel if I were a witness it would bother me because I am basically a shy person and don't like to be on display or the focus of everyone's attention. I feel the general public is interested in seeing the real thing rather than just reading about it in the papers. But I personally never watched any of the Ronny Zamora trial.

"I can't really say from my own experience if it's right or wrong, good or bad. I'm sure I'd have a definite opinion if I or a member of my family, or a friend were directly involved. Then I probably wouldn't like it."

THOMAS E. SHOLTS
JUDGE
THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA

COUNTY COURT HOUSE
WEST PALM BEACH, FLORIDA 33401

June 14, 1978

JUN 19 1978
SUPREME COURT

Ack-
Distribute
To all
Justices
except
CJ.

Honorable Ben F. Overton
Chief Justice
The Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32304

Dear Justice Overton:

Pursuant to the Supreme Court's decision in Post-Newsweek Stations, Florida, Inc., 347 So.2d 402, I enclose 14 copies (2 for each Justice) of my report concerning the Audio-Visual Trial Coverage of the State of Florida v. Mark A. Herman.

Being an active participant in a fully televised trial was very interesting and most challenging, but I sincerely believe the proposed amendment of Canon 3A(7) will have a long-range dilatorious effect on the administration of justice at the trial court level.

Warm regards,

Thomas E. Sholts

TES:js
Enc.

Judge Marvin Mounts, Jr.
Report to the Supreme
Court of Florida Concerning
Audio-Visual Trial Converage

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT OF FLORIDA IN AND
FOR PALM BEACH COUNTY

CRIMINAL DIVISION

STATE OF FLORIDA	)	CASE NO. 77-1675 CF
	)	
vs.	)	
	)	
NOLLIE LEE MARTIN,	)	
	)	
Defendant.	)	
	)	

REPORT TO THE SUPREME COURT OF FLORIDA
CONCERNING AUDIO VISUAL TRIAL COVERAGE

I am in basic agreement with the thoughts and recommendations forwarded to you by Judge Thomas Sholts in his case numbered 77-1236 CF, State of Florida versus Mark A. Herman. My courtroom adjoins Judge Sholts' and I followed that trial.

At the outset, this report reflects my opinion: I have no direct and positive evidence beyond what I think.

Because of my concurrence in Judge Sholts' report, my report covers only some special observations of mine.

The first phase of the Martin case began on Monday, April 17th, 1978 and concluded with a verdict on Friday, April 28th, 1978.

The second stage occurred May 15th, 1978. Portions of the pre-trial motions and almost all of the first trial were video taped. To my knowledge, there was no live television broadcasting; the tapes were edited and broadcast during news reports by the television stations. There was no television coverage of the second stage of the trial. Still cameras operated throughout all stages of pre-trial motions and both trials.

The media were cooperative in all respects and their behavior was commendable.

I asked all participants in the case to share their thoughts with me. I have included the letters of those that chose to do so with this report. No jurors responded.

It is noteworthy that one of the letters reflects that the local Association of Psychiatrists has taken a position against the use of television cameras in the courtroom.

Although I am aware that a number of people have indicated that the use of television cameras does not affect them while in Court, I must admit that both television and still cameras have always made me slightly nervous. I am aware of them and have never been able to overcome my uncomfortable state when I feel that I am the object of their truthful lenses.

I do believe that when an entire trial is broadcast (such as was done by the educational channel in Miami) that that is a worthwhile process for citizens.

While there is much to be said for the educational aspect of the process, television is and continues to be an entertainment medium in its commercial sense; we all know that the matter of the ratings is of the highest consequence in the industry. I also feel commercial television will cover only the sensational trials.

While I have no empirical evidence to demonstrate my belief, it has always seemed to me that prosecutors attempt to persuade a jury to identify with the community and the need of the community to protect itself from criminal conduct. To the extent that a juror feels that his friends, neighbors and business associates have identified him as a person who will decide an important criminal case, I feel that it must certainly be a most difficult influence for him to filter out of his mind as he or she concentrates on the need for objectivity. This concern must, however, be balanced against the impressive argument made by the media representatives in this case that jurors in a small or rural community may know everyone involved in the case before they are selected and sworn. It may very well be true that jurors can and will do their best to overcome improper thoug and influences as they plug into the task of doing justice between

the two competing sides. The difficulty is that we do not know the answers to these questions at this stage.

My chief concern about television in the courtroom, then, is the same one raised by the Florida Bar. We simply do not know enough about how this process affects jurors and witnesses. I also believe that jurors, witnesses, victims and the defendant must have a right to privacy in certain matters which can only be handled on an individual basis. For example, the filming of a defendant who is having restraints placed on him, or the instance of a witness who refuses to testify if they are filmed are matters that require individual decisions. We must not lose sight of the tension and vulnerability that a person feels while on the witness stand, without the presence of the photographing media. That person is at a disadvantage; I do not want to see it compounded until we know more about its influence on all and unless there can be judicial control.

While I was preparing this report, I read Chapter II of Marshall McLuhan's book: Understanding Media: The Extensions of Man:

The comment on the jacket of the paperback edition which I used says that the book raises two fundamental questions about our modern world: What are communications and how do communications affect mankind? The thoughts and ideas which I encountered in reading that chapter convince me that we must take a cautious approach to the subject of television in the courtroom. It is my belief that television has a powerful and a little understood effect on man; a more complex influence than I had previously believed. I have included several quotes from the book that interested me.

> "The effect of T.V., as the most recent and spectacular electric extension of our central nervous system, is hard to grasp for various reasons. Since it has affected the totality of our lives, personal and social and political, it would be quite unrealistic to attempt a 'systematic' or visual presentation of such influence. Instead, it is more feasible to 'present' T.V. as a complex gestalt of data gathered almost at random.

"The Mackworth head-camera, when worn by children watching T.V., has revealed that their eyes follow, not the actions, but the reactions. The eyes scarcely deviate from the faces of the actors, even during scenes of violence. This head-camera shows by projection both the scene and the eye movement simultaneously. Such extraordinary behavior is another indication of the very cool and involving character of the medium.

"Now that we have considered the subliminal force of the T.V. image in a redundant scattering of samples, the question would seem to arise: 'What possible immunity can there be from the subliminal operation of a new medium like television?' People have long supposed that bulldog opacity, backed by firm disapproval, is adequate enough protection against any new experience. It is the theme of this book that not even the most lucid understanding of the peculiar force of a medium can head off the ordinary 'closure' of the senses that causes us to conform to the pattern of experience presented. The utmost purity of mind is no defense against bacteria, though the confreres of Lewis Pasteur tossed him out of the medical profession for his base allegations about the invisible operation of bacteria."

"This is not so much a visual as a tactual-auditory medium that involves all of our senses in depth interplay. For people long accustomed to the merely visual experience of the typographic and photographic varieties, it would seem to be the synesthesia, or tactual depth of T. V. experience, that dislocates things from their usual attitudes of passivity and detachment."

Respectfully submitted,

Marvin Mounts, Jr.

XC: Furnished to Counsel

STRAWN, et al., Report,
In Re: Petition of Post-
Newsweek Stations,
Florida, Inc., for Change
in Code of Judicial Conduct

IN THE SUPREME COURT OF FLORIDA

IN RE: PETITION OF :
POST-NEWSWEEK STATIONS, :
FLORIDA, INC., FOR CHANGE : CASE NO. 46,835
IN CODE OF JUDICIAL CONDUCT. :
:

JUL 24 19[illegible]
CLERK SUPREME COURT

REPORT OF DAVID U. STRAWN
RAYMOND W. BUCHANAN, MILAN
D. MESKE AND BERT PRYOR

Respectfully submitted:

DAVID U. STRAWN, Circuit Judge
18th Judicial Circuit of Florida

TABLE OF CONTENTS

	Page
Preface	iii
Methodology	1
Opinions of Participants at Five Trials	3
Observations Drawn from Opinion Survey at Five Trials	36
Opinions Expressed by County Judges	37
Opinions Expressed by Circuit Judges	44
Observations Drawn from Opinion Survey of Judges	51
Opinions Expressed by Trial Attorneys	53
Observations Drawn from Opinion Survey of Attorneys	60
Questions Suggested by the Data	61
Identification of Research Team	63

Preface
by
Judge David Strawn

Our efforts thus far make it clear that insufficient courtroom photography data has been collected to dictate either the choice of a rule permitting or excluding cameras in the courtroom. Even interim rules proposed now could restrict the flow of information needed to make the best possible decision.

We strongly suggest that the court continue the experiment for another year.

The key to the Court's ultimate decision should perhaps be found in analysis of the effects of photography on lay trial participants. We have surveyed the attitudes of witnesses and jurors as we could, but these persons are not easily located except immediately following their participation in actual trials. Post-testimony and post-verdict sampling of these trial participants is needed in order to produce this vital information. The survey of these persons in the context of actual trials is of critical importance.

Live trial witnesses and jurors' attitudes about courtroom photography have not been adequately measured. The only means available to obtain data and make measurements of the attitudes of witnesses and jurors is by careful scientific coverage of actual trials where cameras are present. Collection of adequate quantities of this data will necessarily require the assistance of the Supreme Court of Florida.

Since constitutional issues are the focus of the Court's consideration, it would be unfortunate to give too little time to collection of the data necessary for the decision. The quality of the Court's ultimate decision in this case will depend largely upon the quantity and quality of information

presented to it. Rhetoric is an important constituent of any decision made in an adversary process. However, factual data about the attitudes of trial participants is essential to the making of the rule, since the rule will probably have the effect of governing trials for many years to come.

The Court needs to take a more active role in the necessary research in order for the data to be collected to be especially meaningful to the Court. We have demonstrated at Florida Technological University that the means are available for doing instructive research about the problem. All the participants in our research project are dedicated volunteers. But without specific guidance from the Court, there has been uncertainty about what information is needed by the Court as it makes its decision. It would be desirable if the Court were to sponsor this research at FTU. Funding should be readily available for such a project. By exchange between professional researchers and the Court, a more meaningful inquiry can be made.

We have attached some of the data from the five Florida trials which were actually measured by our team. Each trial involved extensive photographic media coverage. The method used gives the promise of important information which could be obtained in the coming year, with the Court's assistance.

It may also be that there are demographic differences in juror and witness attitudes in different parts of our state. For example, jurors in the 18th circuit have an average educational level of 13.1 years. Other locales may differ sharply. We should investigate whether features such as educational level have an effect on jurors' attitudes toward

courtroom photography. The additional experimental period would give us an opportunity to control for the demography of our subjects, in order to learn whether their attitudes vary in relation to age, experience and the like. If attitudes do vary, it would simply be the function of the researchers to report the variance to the Court, for decision by the Court.

In effect, the data attached are the products of a well performed pilot study. Further study is needed, as demonstrated by the pilot data. The cost of further study is beyond the means of those who volunteered for production of the work thus far obtained.

It has been our effort to impartially and competently collect information about the attitudes of trial participants toward cameras in Florida's courtrooms. Even so, our pilot study has led us to believe that the methodology should be improved and promptly used, with increasingly sensitive results. If it is the Court's decision to conduct an additional year of the experiment, and to utilize the expertise now accumulated at FTU, we can assure rapid response times. We, too, have accumulated experience in the past years' experiment. We have already overcome most of the difficulties of experiment design and execution. With the assistance of the Justices, we will be able to clear the remaining hurdles with increased ease.

METHODOLOGY

The specific purpose of this study was to measure the impact of the use of television and still cameras in the courtroom on trial participants. To achieve this goal, two steps were taken. (1) One was the gathering of opinions from circuit judges, county judges, and trial attorneys. (2) The other phase was the gathering of opinions from participants in five trials. The attached questionnaires were used to collect the data. The questionnaires were mailed to judges and attorneys, while data from the five trials was collected immediately after the trial concluded.

Responses from judges and attorneys were gratifying. A total of 286 questionnaires were sent to circuit judges and we received 130 replies, which is a 45% return. 181 questionnaires were mailed to county judges, and we received 101 replies, or a 56% return. We mailed questionnaires to 570 trial attorneys and had 247 returned, a 43% return rate. For survey research, these sample returns are excellent. The five trials produced 121 more responses, 52 of which were responses from jurors who served in these trials. Thus, we have a total of 599 responses.

The responses from all respondents were fed into a computer for analysis. We have a voluminous collection of information which correlates responses to each question with

a number of different variables, like age, judicial circuit, etc. This report contains only the frequency of response and percentage for each question. All other information is available upon request.

The following four groups of tables summarize some of the results of our survey.

Opinions of Trial Participants And Observers at Five Trials Involving Camera Coverage

Introduction

The data in this report is organized into five sections. These include:

Section 1: Demographic characteristics of the sample (Tables 1-3).

Section 2: Perceptions of trial participants and observers regarding the effects of cameras on their own behavior (Tables 4-7).

Section 3: Perceptions of trial participants and observers regarding the effects of cameras on the behavior of other trial participants (Tables 8-15).

Section 4: Broad evaluative responses of trial participants and observers (Tables 16-25).

Section 5: Summary data (Tables 26-27).

SECTION 1

Demographic Characteristics of the Sample

TABLE 1

Percentage of Males and Females in Sample

	N	Percent
Males	66	54.5
Females	55	45.5
Totals	121	100

TABLE 2

Percentage of Respondents in Four Age Ranges

	N	Percent
Under 20	11	9.1
21-30	28	23.1
31-40	22	18.2
Over 40	58	47.9
Totals	121	100

TABLE 3

Percentage of Respondents by Role in Trial Process

	N	Percent
Judge	2	1.7
Defense Attorney	4	3.3
Prosecuting Attorney	6	5.0
Defense Witness	1	.8

TABLE 3

Percentage of Respondents by Role in Trial Process

	N	Percent
Prosecution Witness	8	6.6
Juror	52	43.0
Spectator	28	23.1
Court Reporter	5	4.1
Bailiff	9	7.4
Court Clerk	6	5.0
Totals	121	100

SECTION 2

Perceptions of Trial Participants and Observers Regarding the Effects of Cameras on Their Own Behavior

TABLE 4

As a participant or observer in this trial, I found the presence and use of the television cameras to be very distractive.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Very distracting to respondent				
Judges	2	50	50	0
Attorneys	10	10	90	0
Witnesses	9	22.2	66.6	11.1
Jurors	52	34.6	55.8	9.6
Defendants	0	0	0	0
Spectators	27	18.5	70.3	11.1
Court Reporters	5	80	20	0
Bailiffs/Court Clerks	15	13.3	80	6.7
Totals	120	27.5	64.1	8.3

TABLE 5

As a participant or observer in this trial, I found the presence and use of the still cameras to be very distractive.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Very distracting to respondent				
Judges	2	100	0	0
Attorneys	8	37.5	50	12.5
Witnesses	5	0	80	20
Jurors	46	39.2	52.2	8.7
Defendants	0	0	0	0
Spectators	26	19.2	69.3	11.5
Court Reporters	4	50	50	0
Bailiffs/Court Clerks	12	41.6	58.4	0
Totals	103	34	57.3	8.7

TABLE 6

As a participant or observer in this trial, I found the presence and use of the television cameras in the courtroom made me feel tense.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Made respondent feel tense				
Judges	2	0	100	0
Attorneys	10	10	90	0
Witnesses	9	22.2	77.7	0
Jurors	50	20	72	8
Defendants	0	0	0	0
Spectators	27	7.4	74.1	18.5
Court Reporters	5	60	40	0
Bailiffs/Court Clerks	15	0	100	0
Totals	118	15.2	77.1	7.6

TABLE 7

As a participant or observer in this trial, I found the presence and use of the still cameras in the courtroom made me feel tense.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Made respondent feel tense				
Judges	2	0	100	0
Attorneys	8	12.5	75	12.5
Witnesses	5	0	100	0
Jurors	44	20.5	77.3	2.3
Defendants	0	0	0	0
Spectators	25	4	80	16
Court Reporters	4	50	50	0
Bailiffs/Court Clerks	12	0	100	0
Totals	100	13	81	6

SECTION 3

Perceptions of Trial Participants and Observers Regarding the Effects of Cameras on the Behavior of Other Trial Participants

TABLE 8

In my opinion, the presence and use of television cameras in the courtroom inhibited the testimony of the witnesses.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Inhibited testimony of witnesses				
Judges	2	0	100	0
Attorneys	10	40	50	10
Witnesses	9	22.2	66.6	11.1
Jurors	51	17.6	50.9	31.4
Defendants	0	0	0	0
Spectators	27	18.5	48.1	33.3
Court Reporters	5	40	60	0
Bailiffs/Court Clerks	15	20	73.3	6.7
Totals	119	21	53.8	25.2

TABLE 9

In my opinion, the presence and use of the still cameras in the courtroom inhibited the testimony of the witnesses.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Inhibited testimony of witnesses				
Judges	2	0	0	100
Attorneys	8	50	37.5	12.5
Witnesses	5	0	100	0
Jurors	45	20	48.9	31.1
Defendants	0	0	0	0
Spectators	25	16	48	36
Court Reporters	4	50	50	0
Bailiffs/Court Clerks	12	25	58.4	16.7
Totals	101	21.8	50.5	27.7

TABLE 10

In my opinion the presence and use of television cameras in this trial had an intimidating effect on the judge.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Intimidated the judge				
Judges	2	0	100	0
Attorneys	10	0	90	10
Witnesses	9	11.1	77.8	11.1
Jurors	50	6	92	2
Defendants	0	0	0	0
Spectators	27	3.7	81.5	14.8
Court Reporters	5	0	100	0
Bailiffs/Court Clerks	15	0	93.3	6.7
Totals	118	4.2	89	6.8

TABLE 11

In my opinion the presence and use of still cameras in this trial had an intimidating effect on the judge.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Intimidated the judge				
Judges	2	0	100	0
Attorneys	8	0	87.5	12.5
Witnesses	5	0	80	20
Jurors	45	6.6	91.1	2.2
Defendants	0	0	0	0
Spectators	25	0	84	16
Court Reporters	4	0	100	0
Bailiffs/Court Clerks	12	0	91.7	8.3
Totals	101	3	89.1	7.9

TABLE 12

In my opinion the presence and use of television cameras in this trial did not affect the courtroom behavior of the attorneys in any way.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Did not affect attorneys				
Judges	2	100	0	0
Attorneys	10	60	30	10
Witnesses	9	44.4	22.2	33.3
Jurors	51	62.7	23.5	13.7
Defendants	0	0	0	0
Spectators	28	78.6	14.3	7.1
Court Reporters	5	60	40	0
Bailiffs/Court Clerks	15	66.7	13.3	20
Totals	120	65.8	20.8	13.3

TABLE 13

In my opinion the presence and use of still cameras in this trial did not affect the courtroom behavior of the attorneys in any way.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Did not affect the attorneys				
Judges	2	100	0	0
Attorneys	8	75	12.5	12.5
Witnesses	5	60	0	40
Jurors	45	66.7	22.2	11.1
Defendants	0	0	0	0
Spectators	26	76.9	15.3	7.7
Court Reporters	4	75	25	0
Bailiffs/Court Clerks	12	58.3	16.7	25
Totals	102	69.6	17.7	12.7

TABLE 14

In my opinion, the presence and use of television cameras in the courtroom in this trial caused the jurors to be distracted.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Distracted the jurors				
Judges	2	50	0	50
Attorneys	10	30	40	30
Witnesses	9	11.1	33.3	55.6
Jurors	51	21.6	70.5	7.8
Defendants	0	0	0	0
Spectators	27	14.8	62.9	22.2
Court Reporters	5	40	40	20
Bailiffs/Court Clerks	15	13.4	66.7	20
Totals	119	20.2	60.5	19.3

TABLE 15

In my opinion, the presence and use of still cameras in the courtroom in this trial caused the jurors to be distracted.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Distracted the Jurors				
Judges	2	50	0	50
Attorneys	8	37.5	12.5	50
Witnesses	5	0	60	40
Jurors	45	24.4	73.3	2.2
Defendants	0	0	0	0
Spectators	25	12	56	32
Court Reporters	4	50	25	25
Bailiffs/Court Clerks	12	16.7	58.3	25
Totals	101	21.8	58.4	19.8

SECTION 4

Broad Evaluative Responses of Trial Participants and Observers

TABLE 16

As a participant or observer in this trial, I believe the presence and use of the television cameras to be fair to the defendant.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
TV cameras fair to defendant				
Judges	2	0	50.0	50.0
Attorneys	10	50	20.0	30.0
Witnesses	9	44.4	22.2	33.3
Jurors	52	53.9	23.1	23.1
Defendants	0	0	0	0
Spectators	28	64.2	14.3	21.4
Court Reporters	5	20	80.0	0
Bailiffs/Court Clerks	15	60	6.7	33.3
Totals	121	53.7	21.5	24.8

TABLE 17

As a participant or observer in this trial, I believe the presence and use of the still cameras to be fair to the defendant.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Still cameras fair to defendant				
Judges	2	0	50	50
Attorneys	8	37.5	25	37.5
Witnesses	5	40	20	40
Jurors	46	54.3	26.1	19.6
Defendants	0	0	0	0
Spectators	25	68	12	20.0
Court Reporters	4	50	50	0
Bailiffs/Court Clerks	12	66.6	8.3	25.0
Totals	102	55.9	21.5	22.5

TABLE 18

As a participant or observer in this trial, I believe the presence and use of the television cameras to be fair to the witnesses.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
TV cameras fair to witnesses				
Judges	2	0	50	50
Attorneys	10	40	40	20
Witnesses	9	33.3	33.3	33.3
Jurors	51	49	25.5	25.5
Defendants	0	0	0	0
Spectators	27	63	22.2	14.8
Court Reporters	5	20	80	0
Bailiffs/Court Clerks	15	53.4	13.3	33.3
Totals	119	48.8	27.7	23.5

TABLE 19

As a participant or observer in this trial, I believe the presence and use of the still cameras to be fair to the witnesses.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Still cameras fair to witnesses				
Judges	2	0	50	50
Attorneys	8	25	50	25
Witnesses	5	40	20	40
Jurors	45	51.1	26.7	22.2
Defendants	0	0	0	0
Spectators	25	60	24	16
Court Reporters	4	25	75	0
Bailiffs/Court Clerks	12	41.6	25	33.3
Totals	101	47.5	29.7	22.8

TABLE 20

As a participant or observer in this trial, I believe the presence and use of the television cameras interferes with the conduct of the trial.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Interferes with conduct of trial				
Judges	2	50	50	0
Attorneys	10	20	60	20
Witnesses	9	11.1	77.8	11.1
Jurors	51	21.5	66.7	11.8
Defendants	0	0	0	0
Spectators	27	22.2	70.3	7.4
Court Reporters	5	40	60	0
Bailiffs/Court Clerks	15	6.7	80	13.3
Totals	119	20.1	68.9	10.9

TABLE 21

As a participant or observer in this trial, I believe the presence and use of the still cameras interferes with the conduct of the trial.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Interferes with conduct of trial				
Judges	2	50	50	0
Attorneys	8	12.5	37.5	50
Witnesses	5	0	100	0
Jurors	45	24.5	73.3	2.2
Defendants	0	0	0	0
Spectators	25	16	64	20
Court Reporters	4	50	50	0
Bailiffs/Court Clerks	12	8.3	66.7	25
Totals	101	19.8	67.3	12.9

TABLE 22

As a participant or observer in this trial, I believe the presence and use of the television cameras in the courtroom are in the best interest of the public.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
In best interest of the public				
Judges	2	50	50	0
Attorneys	10	40	50	10
Witnesses	9	55.5	0	44.4
Jurors	50	62	18	20
Defendants	0	0	0	0
Spectators	28	82.2	10.7	7.1
Court Reporters	5	0	60	40
Bailiffs/Court Clerks	15	66.7	20	13.3
Totals	119	62.2	20.2	17.6

TABLE 23

As a participant or observer in this trial, I believe the presence and use of the still cameras in the courtroom is in the best interest of the public.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
In best interest of the public				
Judges	2	50	50	0
Attorneys	8	25	50	25
Witnesses	5	60	0	40
Jurors	44	70.5	15.9	13.6
Defendants	0	0	0	0
Spectators	26	80.8	11.5	7.7
Court Reporters	4	25	25	50
Bailiffs/Court Clerks	12	66.7	16.7	16.7
Totals	101	66.3	17.8	15.8

TABLE 24

In my opinion the presence and use of the television cameras in the courtroom is a desirable practice.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
A desirable practice				
Judges	2	50	50	0
Attorneys	10	50	30	20
Witnesses	9	44.4	22.2	33.3
Jurors	51	43.2	21.6	35.3
Defendants	0	0	0	0
Spectators	28	71.4	21.4	7.1
Court Reporters	5	0	80	20
Bailiffs/Court Clerks	15	60	13.3	26.7
Totals	120	50.9	24.1	25

TABLE 25

In my opinion the presence and use of the still cameras in the courtroom is a desirable practice.

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
A desirable practice				
Judges	2	50	50	0
Attorneys	8	37.5	37.5	25
Witnesses	5	60	0	40
Jurors	45	55.5	22.3	22.2
Defendants	0	0	0	0
Spectators	26	65.4	19.2	15.4
Court Reporters	4	25	50	25
Bailiffs/Court Clerks	12	50	16.6	33.3
Totals	102	54.9	22.6	22.5

SECTION 5

Summary Data

TABLE 26

Summary of Opinion Regarding the Use of TV Cameras in the Courtroom

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Very distracting to respondent	120	27.5	64.1	8.3
Made respondent feel tense	118	15.2	77.1	7.6
Fair to defendant	121	53.7	21.5	24.8
Fair to witnesses	119	48.8	27.7	23.5
Interferes with conduct of trial	119	20.1	68.9	10.9
In best interest of public	119	62.2	20.2	17.6
A desirable practice	120	50.9	24.1	25
Inhibited testimony of witnesses	119	21	43.8	25.2
Intimidated judge	118	4.2	89	6.8
Did not affect attorneys	120	65.8	20.8	13.3
Distracted the jurors	119	20.2	60.5	19.3

TABLE 27

Summary of Opinion Regarding the Use of Still Cameras in the Courtroom

Statement	Number of Respondents	Agree (%)	Disagree (%)	Uncertain (%)
Very distracting to respondent	103	34	57.3	8.7
Made respondent feel tense	100	13	81	6
Fair to defendant	102	55.9	21.5	22.5
Fair to witnesses	101	47.5	29.7	22.8
Interferes with conduct of trial	101	19.8	67.3	12.9
In best interest of public	101	66.3	17.8	15.8
A desirable practice	102	54.9	22.6	22.5
Inhibited testimony of witnesses	101	21.8	50.5	27.7
Intimidated judge	101	3	89.1	7.9
Did not affect attorneys	102	69.6	17.7	12.7
Distracted the jurors	101	21.8	58.4	19.8

Observations Drawn From The Opinion Survey of Participants At Five Trials

This report includes the responses of 121 participants in five trials. In each case the respondents completed the questionnaire at the conclusion of the trial.

While the majority of respondents reported that the presence of the cameras was neither distracting nor tension-producing for them, our findings indicate that some participants did perceive adverse effects of the cameras. For example, over one-third of the jurors reported the TV and still cameras to be "very distracting," and one out of five jurors believed that the cameras caused them to feel tense (see Tables 4-7).

Our small sample of judges, attorneys, witnesses, and other key trial participants makes it infeasible to draw inferences from their data. However, by combining the data of the 121 respondents it can be seen that approximately 20% of the trial participants believed that the presence of cameras inhibited witness testimony (Tables 8-9), and affected the behavior of the attorneys and jurors (Tables 12-15). It should also be noted, however, that approximately 80% of our sample either disagreed or were uncertain that the cameras produced such effects.

We also requested responses to a series of evaluative statements. Again, the majority of trial participants did not render negative evaluations of the use of cameras in the courtroom. Still, a noticeable and consistent number did respond negatively. For example, a range of 17.8% to 29.7% of the respondents disagreed that the use of cameras is fair to the defendant and witnesses (Tables 16-19), and reported feeling that the use of cameras interfered with the conduct of the trial (Tables 20-21). Tables 24 and 25 show that slightly over half of the respondents believe that the use of cameras is a desirable practice.

Summary of Opinions Expressed by
County Judges Regarding The Use
Of Cameras In The Courtroom

Introduction

The summary data which follows has been organized into five tables. These include:

Table 1: The County Judges' perceptions regarding the effects of the presence of cameras on themselves.

Table 2: The County Judges' perceptions of the effects of cameras on other trial participants.

Table 3: The County Judges' opinions regarding continued use of cameras in the courtroom under specified hypothetical conditions.

Table 4: The County Judges' opinions regarding continued use of cameras in the courtroom.

Table 5: The types of trials which have attracted camera coverage.

County Judges

TABLE 1

County Judges' perceptions of how the presence of cameras affected them.

Question	Yes (percent)	No (percent)
Did you experience any serious trial disruptions due to the presence of cameras in your courtroom?		
TV cameras	4.2 (1)[a]	95.8 (23)
Still cameras	3.0 (1)	97.0 (32)
Did you personally feel any tenseness or serious discomfort due to the presence and use of the cameras in your courtroom?		
TV cameras	37.0 (10)	63.0 (17)
Still cameras	20.6 (7)	79.4 (27)

[a]Number of respondents in parentheses

County Judges

TABLE 2

County Judges' perceptions regarding the effects of cameras on other trial participants.

Question		Yes (percent)	No (percent)
From your observations, did the presence and use of cameras in your courtroom cause serious distractions to jurors?			
	TV cameras	14.3 (3)[a]	81.0 (17)
	Still cameras	12.5 (4)	87.5 (28)
From your observations, do you believe the testimony of the witnesses was adversely affected by the presence and use of cameras in the courtroom?			
	TV cameras	22.7 (5)	77.3 (17)
	Still cameras	18.8 (6)	81.3 (26)
In your opinion, did the presence of cameras in the courtroom cause the defendant to experience undue harassment or indignities?			
	TV cameras	16.7 (4)	83.3 (20)
	Still cameras	9.7 (3)	90.3 (28)
Do you feel the attorneys made any serious efforts to "play to the public audience" when the cameras were used in your courtroom?			
	TV cameras	40.7 (11)	59.3 (16)
	Still cameras	22.9 (8)	77.1 (27)

[a]

County Judges

TABLE 3

County Judges' opinions regarding continued use of cameras in the courtroom under specified hypothetical conditions.

Question	Yes (percent)	No (percent)
If you knew that the use of the cameras in the courtroom was believed by one or two jurors, on the average, to be unfair to the defendant, would you object to the use of the cameras?	81.5 (75)[a]	18.5 (17)
If you knew that the use of cameras in the courtroom would cause, on the average, one or two jurors to be momentarily distracted at various times during the course of a trial, would you object to the presence of the cameras?	63.2 (60)	36.8 (35)

[a]Number of respondents in parentheses

County Judges

TABLE 4

County Judges' Opinions regarding continued use of cameras in the courtroom.

Question	Yes (percent)	No (percent)
The Supreme Court's one year experiment with cameras in the courtroom will soon terminate. Based upon your observations, do you believe that the court should continue to allow live camera coverage of courtroom procedures?		
County Judges who have presided over at least one trial in which cameras were used.	55.9 (19)[a]	44.1 (15)
County Judges who have not experienced cameras in their courtrooms.	35.7 (20)	64.3 (36)
Responses of all County Judges.	42.0 (39)	57.1 (52)

[a]Number of subjects in parentheses.

County Judges

TABLE 5

Kinds of trials which attracted camera coverage in county courts.*

Type of Trial	Number
Sex offenses	14
Homicide	13
Larceny	7
Criminal-conspiracy	5
Assault-battery	5
Arson-criminal mischief	3
Child abuse	3
Bribery-corruption	3
Trespass	2
Robbery	2
Gambling	1
Burglary	1
Drug abuse	1
Other	17

*These figures represent a total, as reported by all respondents. It should be noted that different respondents may, at times, be reporting the same trial.

Summary of Opinions Expressed by
Circuit Judges Regarding The Use
Of Cameras In The Courtroom

Introduction

The summary data which follows has been organized into five tables. These include:

Table 1: The Circuit Judges' perceptions regarding the effects of the presence of cameras on themselves.

Table 2: The Circuit Judges' perceptions of the effects of cameras on other trial participants.

Table 3: The Circuit Judges' opinions regarding continued use of cameras in the courtroom under specified hypothetical conditions.

Table 4: The Circuit Judges' opinions regarding continued use of cameras in the courtroom.

Table 5: The types of trials which have attracted camera coverage.

Circuit Judges

TABLE 1

Circuit Judges' perceptions of how the presence of cameras affected them.

Question	Yes (percent)	No (percent)
Did you experience any serious trial disruptions due to the presence of cameras in your courtroom?		
TV cameras	12.2 (6)[a]	87.8 (43)
Still cameras	4.4 (3)	95.6 (65)
Did you personally feel any tenseness or serious discomfort due to the presence and use of the cameras in your courtroom?		
TV cameras	39.6 (19)	60.4 (29)
Still cameras	27.3 (18)	72.7 (48)

[a]Number of respondents in parentheses

Circuit Judges

TABLE 2

Circuit Judges' perceptions regarding the effects of cameras on other trial participants.

Question		Yes (percent)	No (percent)
From your observations, did the presence and use of cameras in your courtroom cause serious distractions to jurors?			
	TV cameras	23.4 (11)[a]	76.6 (36)
	Still cameras	16.9 (11)	83.1 (54)
From your observations, do you believe the testimony of the witnesses was adversely affected by the presence and use of cameras in the courtroom?			
	TV cameras	31.9 (15)	68.1 (32)
	Still cameras	19.7 (13)	80.3 (53)
In your opinion, did the presence of cameras in the courtroom cause the defendant to experience undue harassment or indignities?			
	TV cameras	19.1 (9)	80.9 (38)
	Still cameras	10.8 (7)	89.4 (56)
Do you feel the attorneys made any serious efforts to "play to the public audience" when the cameras were used in your courtroom?			
	TV cameras	29.4 (15)	70.6 (36)
	Still cameras	17.6 (12)	82.4 (56)

[a]Number of respondents in parentheses

Circuit Judges

TABLE 3

Circuit Judges' opinions regarding continued use of cameras in the courtroom under specified hypothetical conditions.

Question	Yes (percent)	No (percent)
If you knew that the use of the cameras in the courtroom was believed by one or two jurors, on the average, to be unfair to the defendant, would you object to the use of the cameras?	75.2 (91)[a]	24.8 (30)
If you knew that the use of cameras in the courtroom would cause, on the average, one or two jurors to be momentarily distracted at various times during the course of a trial, would you object to the presence of the cameras?	53.3 (65)	46.7 (57)

[a]Number of respondents in parentheses

Circuit Judges

TABLE 4

Circuit Judges' opinions regarding continued use of cameras in the courtroom.

Question	Yes (percent)	No (percent)
The Supreme Court's one year experiment with cameras in the courtroom will soon terminate. Based upon your observations, do you believe that the court should continue to allow live camera coverage of courtroom procedures?		
Circuit Judges who have presided over at least one trial in which cameras were used.	55.6 (35)[a]	44.4 (28)
Circuit Judges who have not experienced cameras in their courtrooms.	38.3 (18)	61.7 (29)
Responses of all Circuit Judges.	47.7 (53)	52.3 (58)

[a]Number of subjects in parentheses.

OPINION SURVEY

CIRCUIT JUDGES

What kinds of trials did the media typically cover?*

Type of Trial	Number
Homicide	38
Sex offense	16
Robbery	10
Criminal conspiracy	9
Child abuse	8
Assault-battery	5
Weapons	5
Drug abuse	5
Burglary	4
Perjury	3
Larceny	3
Gambling	2
Arson-criminal mischief	2
Bribery-corruption	2
Other	16

*These figures represent a total, as reported by all respondents. It should be noted that different respondents may, at times, be reporting the same trial.

Observations Drawn From The Opinion Survey Of County and Circuit Judges

In general, the majority of county and circuit judges did not indicate that cameras in the courtroom were overly distractive or caused any serious trial disruptions. In addition, it was believed by most of the judges that the testimony of witnesses was not adversely affected. The vast majority of them believed that the camera presence did not cause undue harassments or indignities to defendants. The judges for the most part, appeared to adjust to the cameras very well, with most of them admitting to no serious discomfort or tenseness. The fear that attorneys will "play to the cameras" was not substantiated by the majority of the judges in our sample.

Of special interest is the fact that judges who presided over one or more trials in which cameras were present were more favorably disposed toward the cameras than were those who had not experienced cameras in their courtrooms (see Table 4). This is a consistent finding across all judicial respondents. This observation suggests familiarity with cameras in the courtroom tends to reduce anxiety concerning their potential harm.

Still cameras were found to be far less offensive in most instances than television cameras, even though some respondents did note that loud camera shutters were momentarily distracting.

Nevertheless, the overall majority of both county and circuit

judges rejected the continued practice of allowing live camera coverage in the courtroom. The most substantial reasons which appear to emerge may be summarized in one single, over-riding observation. Most judges who reject cameras in the courtroom do so on the philosophical grounds that "Justice must satisfy the appearance of justice." They believe that our system of law must prevent even the possibility of unfairness to a defendant. They are not yet convinced that cameras do not have a prejudicial effect on jurors and witnesses.

We recommend that the camera in the courtroom experiment continue so that more specific research can be done involving jurors and witnesses. Our pilot study, involving five trials, indicates that the problem may not be as serious as some suppose. However, additional data is needed before more reliable inferences can be drawn.

Summary of Opinions Expressed by
Trial Attorneys Regarding the Use
Of Cameras in The Courtroom

Introduction

The summary data which follows has been organized into five tables. These include:

Table 1:	The Trial Attorneys' perceptions regarding the effects of the presence of cameras on themselves.
Table 2:	The Trial Attorneys' perceptions of the effects of cameras on other trial participants.
Table 3:	The Trial Attorneys' opinions regarding continued use of cameras in the courtroom under specified hypothetical conditions.
Table 4:	The Trial Attorneys' opinions regarding continued use of cameras in the courtroom.
Table 5:	The types of trials which have attracted camera coverage.

Trial Attorneys

TABLE 1

Trial Attorneys' perceptions of how the presence of cameras affected them.

Question	Yes (percent)	No (percent)
Did you experience any serious trial disruptions due to the presence of cameras in your courtroom?		
TV cameras	17.4 (15)[a]	82.6 (71)
Still cameras	11.2 (10)	88.8 (79)
Did you personally feel any tenseness or serious discomfort due to the presence and use of the cameras in your courtroom?		
TV cameras	45.6 (41)	54.4 (49)
Still cameras	28.7 (27)	71.3 (67)

[a]Number of respondents in parentheses

Trial Attorneys

TABLE 2

Trial Attorneys' perceptions regarding the effects of cameras on other trial participants.

Question		Yes (percent	No(percent)
From your observations, did the presence and use of cameras in your courtroom cause serious distractions to jurors?			
	TV cameras	51.8 (44)[a]	48.2 (41)
	Still cameras	34.5 (30)	65.5 (57)
From your observations, do you believe the testimony of the witnesses was adversely affected by the presence and use of cameras in the courtroom?			
	TV cameras	49.4 (44)	50.6 (45)
	Still cameras	33.7 (30)	66.3 (59)
In your opinion, did the presence of cameras in the courtroom cause the defendant to experience undue harassment or indignities?			
	TV cameras	49.4 (42)	50.6 (43)
	Still cameras	39.6 (36)	60.4 (55)
Do you feel the attorneys made any serious efforts to "play to the public audience" when the cameras were used in your courtroom?			
	TV cameras	38.2 (34)	61.8 (55)
	Still cameras	22.7 (22)	77.3 (75)

[a]Number of respondents in parentheses

Trial Attorneys

TABLE 3

Trial Attorneys' opinions regarding continued use of cameras in the courtroom under specified hypothetical conditions.

Question	Yes (percent)	No (percent)
If you knew that the use of the cameras in the courtroom was believed by one or two jurors, on the average, to be unfair to the defendant, would you object to the use of the cameras?	76.6 (183)[a]	23.4 (56)
If you knew that the use of cameras in the courtroom would cause, on the average, one or two jurors to be momentarily distracted at various times during the course of a trial, would you object to the presence of the cameras?	81.2 (181)	18.8 (42)

[a]Number of respondents in parentheses

Trial Attorneys

TABLE 4

Trial Attorneys' opinions regarding continued use of cameras in the courtroom.

Question	Yes (percent)	No (percent)
The Supreme Court's one year experiment with cameras in the courtroom will soon terminate. Based upon your observations, do you believe that the court should continue to allow live camera coverage of courtroom procedures?		
Trial Attorneys who have participated in at least one trial in which cameras were used.	47.8 (43)[a]	52.2 (47)
Trial Attorneys who have not experienced cameras in their courtrooms.	34.6 (47)	65.4 (89)
Responses of all Trial Attorneys.	40.4 (92)	59.6 (136)

[a]Number of subjects in parentheses

Trial Attorneys

TABLE 5

Kinds of trials which attracted camera coverage in county courts.*

Type of Trial	Number
Homicide	199
Sex offenses	108
Bribery-corruption	76
Child abuse	54
Robbery	49
Drug abuse	47
Criminal-conspiracy	47
Arson-criminal mischief	33
Gambling	30
Perjury	21
Weapons	17
Assault-battery	17
Burglary	13
Larceny	12
Trespass	6
Bad Checks	6
Other	39

*These figures represent a total as reported by all respondents. It should be noted that different respondents may, at times, be reporting the same trial.

Observations Drawn From The Opinion Survey of Attorneys

Trial attorneys tended to agree with county and circuit judges that cameras in the courtroom did not present any serious trial disruptions. However, trial attorneys overall tended to be more negative toward the cameras than judges. For example, attorneys, by a small majority (52%), tended to believe that the cameras were a serious source of distraction to jurors. They were almost evenly split concerning whether or not cameras adversely affected the testimony of witnesses and whether or not they caused the defendants to suffer undue harassment or indignities.

Generally, attorneys do not perceive that their colleagues "play to the cameras," however, a 46% minority did admit to feelings of tenseness and discomfort. Attorneys found still cameras to be far less offensive than television cameras.

Overall, the majority of the attorneys did express strong feelings against continued use of cameras in the courtroom (see Table 4). However, as with judges, attorneys who have experienced cameras in the courtroom tended to be more favorably disposed toward their use, although those who favored were still in a slight minority (see Table 4).

Questions Suggested by the Data

We offer the following questions as subjects of concern revealed by our research. We realize some, if not all, may be obvious to the Court, and we offer them for whatever corroborative value they may have:

1. Should there be tighter regulations on shutter noise for still cameras? Our research indicates there was frequent criticism concerning shutter noise, although there were no strong objections to still cameras per se.
2. Should a rule be considered forbidding photographing or video-taping jurors while they are in the jury box during the course of a trial? In addition, should a rule be considered forbidding photographing or video-taping of the venire during voir dire? Our data suggest that 20-33% of the jurors reported concern over the use of cameras in the courtroom.
3. Should tighter controls be exerted concerning where TV cameras are placed in the courtroom? Subjects have commented on perceived unfavorable locations of cameras. In addition, should sound jacks be installed in the rear of the courtroom to insure proper quality of sound?

4. Should consideration be given concerning a rule regulating camera coverage of victims of rape and minors who have been victims of sexual crimes?

Research Team

This research was conducted by the following individuals:

Judge David U. Strawn (305-269-8447)
18th Judicial Circuit
Titusville Courthouse
Titusville, Fl. 32780

Dr. Raymond W. Buchanan, Chairman (305-275-2681)
Department of Communication
Florida Technological University
Box 25000
Orlando, Fl. 32816

Dr. Milan D. Meeske, Associate Professor (305-275-2681)
Department of Communication
Florida Technological University
Box 25000
Orlando, Fl. 32816

Dr. Bert Pryor, Assistant Professor (305-275-2681)
Department of Communication
Florida Technological University
Box 25000
Orlando, Fl. 32816

Circuit Court
Eighteenth Judicial Circuit

BREVARD COUNTY COURTHOUSE
TITUSVILLE, FLORIDA 32780

DAVID U. STRAWN
CIRCUIT JUDGE

259-3447

July 20, 1978

Clerk of the Supreme Court
Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32304

JUL 24 19[illegible]

The attached material is for filing in the Petition Of Post-Newsweek Stations, Florida, Inc., For Change In Code Of Judicial Conduct, case no. 46,835.

Thank you for your assistance in this matter.

Cordially,

Sharon Long
Secretary to
DAVID U. STRAWN

encl.

Report of the Supreme Court Committee to Monitor and Evaluate the Use of Audio and Visual Equipment in the Courtroom (Wisconsin)

FILED

MAR 30 1979

CLERK OF SUPREME COURT
MADISON, WISCONSIN

REPORT OF THE

SUPREME COURT COMMITTEE

TO MONITOR AND EVALUATE THE USE OF

AUDIO AND VISUAL EQUIPMENT IN THE COURTROOM

April 1, 1979

Contents of the Report

		Page
Sec. I:	The Court Order and explanatory letter of the Chief Justice . .	1
Sec. II:	Various cases	
	(1) State v. Dillabaugh	6
	(2) The McCoy Murder Case	24
	(3) The trial of Richard Todd Buck	27
	(4) The trial of Filemon Amaro	34
	(5) Bail hearing of Ray Mendoza	38
	(6) The sentencing of Roxanne Stevens	41
	(7) Other proceedings	
	Wisconsin Banker's Assoc. v. Mutual Savings & Loan	44
	Observations of Judge Pappas	44
	A Police and Fire Commission Hearing	46
	Case of Larry Solles and Steven Drenning	48
	Case of Barbara Hoffman	48
	Case of Paul T. Jones, Jr.	48
Sec. III:	Federal and state views of the problem	49
Sec. IV:	Basic policy views of the Committee	56
Sec. V:	Specific recommendations with respect to the Court's Guidelines	61
Sec. VI:	Conclusions	71
Appendix A:	Court's Charge to the Committee	
Appendix B:	Questions Addressed to the Judge	
Appendix C:	Questions Addressed to Counsel	
Appendix D:	Questions Addressed to Witnesses	
Appendix E:	Questions Addressed to Jurors	
Appendix F:	The 1970 Report	
Appendix G:	Letter from Robert J. Paul, Deputy State Public Defender	
Appendix H:	Recommended Revised Rules	
Appendix I:	Observer's Report: State v. Patri	

REPORT OF THE COMMITTEE TO MONITOR CAMERAS IN THE COURTROOM

MARCH 24, 1979

I.

THE COURT ORDER

The Supreme Court issued an order on December 23, 1977, which suspended Rule 14 of the Code of Judicial Ethics for a one-year period beginning April 1, 1979, and following a hearing which was held on February 20, 1978, the Court, on March 16, 1978, adopted rules or guidelines to govern the use of audio or visual equipment in the courtroom during the one-year period. The Court also decided, in its general order, to appoint a committee to monitor and evaluate the use of audio or visual equipment in the courtroom, the committee to consist of three representatives of the news media to be nominated by the news media, three trial judges, two members of the State Bar nominated by the State Bar, and three non-lawyers. The committee was directed to report to the Court no later than March 1, 1979, but at the request of the committee the Court extended the reporting date to April 1, 1979.

The following persons were appointed to the monitoring committee:

Judge Michael T. Sullivan, Milwaukee
Judge William F. Eich, Madison
Judge William J. Duffy, Green Bay
Professor David Fellman, University of Wisconsin-Madison, Chairman
Professor James Hoyt, University of Wisconsin-Madison
Ms. Anne Rossmeier, Stevens Point
Attorney William Adler, Eau Claire
Attorney James Peter O'Neill, Milwaukee
Ms. Nancy Mersereau, Port Washington
Edward Hinshaw, Milwaukee
Mr. Richard Bauer, Milwaukee

The reporter for the committee was Court Commissioner William Mann, and the committee was assisted by William Gansner of the Wisconsin Department of Justice and a representative of the State Public Defender's office. The

committee takes this opportunity to express its special appreciation for the efficient services of Mr. Mann. At its request, the committee was authorized by the Chief Justice to employ several graduate students or law students, to be compensated at an hourly rate, to serve as court observers. The Court's instructions to the committee were spelled out by the Chief Justice in a statement dated April 26, 1978, attached to this report as Appendix A.

The Court adopted the following guidelines governing the use of audio or visual equipment in courtrooms for the duration of the experimental year, April 1, 1978 through March 31, 1979:

1. Authority of Presiding Judge

These standards of conduct do not limit or restrict the power, authority, or responsibility otherwise vested in the presiding judge to control the conduct of proceedings before the judge. The authority of the presiding judge over the inclusion or exclusion of the press or the public at particular proceedings or during the testimony of particular witnesses is applicable to any person engaging in any activity authorized by these standards.

2. Media Coordinator

The media covering each administrative district shall designate a coordinator to work with the chief judge of the administrative district and the presiding judge in a court proceeding in implementing these standards.

3. Equipment and Personnel

a) One portable camera, (either 16 mm sound on film, self-blimped, camera, or videotape electronic camera) operated by one person is authorized in any court proceeding. One additional camera operated by one additional person is authorized if a request to film or tape the proceeding is received from a person or organization which does not have a camera of the same type as the first camera authorized. One additional camera operated by one additional person is authorized to permit a person or organization to televise live or to film the entire court proceeding from beginning to end. A maximum of three cameras are authorized under this standard.

b) Two still photographers, each using not more than two cameras with not more than two lenses for each camera, are authorized to take photographs for the print media in any court proceeding.

c) One audio system for radio broadcast purposes is authorized in any court proceeding. Audio pickup for all media purposes must be made through any existing audio system in the court facility. If no suitable audio system exists in the court facility, microphones and related wiring must be unobtrusive.

d) The media coordinator shall be responsible for receiving requests to engage in the activities authorized by these standards in a particular court proceeding and shall make the necessary allocations of authorizations among those filing the requests. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all audio or visual equipment from the proceeding.

4. Sound and Light Criteria

Only audio or visual equipment which does not produce distracting light or sound may be used to cover a court proceeding. Artificial lighting devices must not be used in connection with any audio or visual equipment. Only equipment approved by the presiding judge in advance of the court proceeding may be used during the proceeding.

5. Location of Equipment and Personnel

a) The presiding judge shall designate the location in the courtroom for the camera equipment and operators. The presiding judge shall restrict camera equipment and operators to areas open to the public, but the camera equipment and operators must not block the view of persons seated in the public area of the courtroom.

b) Camera operators shall occupy only the area authorized by the presiding judge and shall not move about the courtroom during the court proceeding. Film, tape, or lenses must not be changed during the court proceeding. Equipment authorized by these standards must not be moved or changed during the court proceeding.

6. Courtroom Light Sources

Modifications in the lighting of a court facility may be made only with the approval of the presiding judge. Approval of other authorities may also be required.

7. Conferences

Audio pickup, broadcast, or recording of a conference in a court facility between an attorney and client, co-counsel, or attorneys and the presiding judge held at the bench is not permitted.

8. Recesses

Audio or visual equipment authorized by these standards must not be operated during a recess in a court proceedings.

9. Use of Evidence

Any film, videotape, photograph, or audio reproduction made as a result of these standards is inadmissible as evidence in any court proceeding.

10. Resolution of Disputes

A dispute as to the application of these standards in a court proceeding may be referred only to the chief judge of the administrative district for resolution as an administrative matter. An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any person or organization seeking to exercise a privilege conferred by these standards any order or ruling of a presiding judge or chief judge under these standards.

11. Prohibition on Photographing at Request of Participant

A presiding judge may for cause prohibit the photographing of a participant with a film, videotape or still camera on the judge's own motion or the request of a participant in the court proceeding.

12. Inapplicability to Individuals

The privileges granted by these standards may be exercised only by persons or organizations which are part of the news media.

In addition, on April 21, 1978, Chief Justice Beilfuss sent to all judges in the State the following explanatory statement:

The first two weeks of the one year trial period during which audio and visual equipment is permitted in courtrooms have demonstrated that there may be some misunderstanding concerning the Standards and their application. For this reason the following explanatory comments may be helpful.

1. Perhaps the greatest confusion has arisen over the authority of the presiding judge to prohibit the use of audio or visual equipment in the courtroom. This involves the application of Standards 1 and 11.

Standard No. 1 is intended to point out that the rights granted under the Standards to the news media are not superior to those of the public or reporters for the news media to attend court proceedings. Thus, if the presiding judge under existing law can exclude the public and representatives of the news media from a court proceeding, then persons operating audio or visual equipment under the standards can also be excluded.

Standard No. 11, on the other hand, is intended only to permit the presiding judge for cause in the exercise of discretion to prohibit the photographing of an individual participant in a trial (including parties, witnesses, jurors, counsel, or court personnel) either at the request of a participant or on the judge's own motion. It is not intended to permit the judge to ban all cameras and audio equipment from a trial except as may be authorized under Standards No. 1 and 10. It is not intended to give a witness or other participant the right to prohibit the photographing of the witness while testifying. It is not intended to permit the presiding judge to prohibit the recording of the testimony of a witness, except as may be authorized under Standards No. 1 and 10.

"Cause" as used in Standard No. 11 is intended to require that there be some reasonable basis other than the desire not to be photographed to justify prohibiting the photographing of a participant. Cause may include a reasonable fear of physical harm, the protection of a minor's reputation, a reasonable fear of undue embarrassment, or the like. The trial judge may require requests under Standard No. 11 to be filed with the Clerk of the Court.

2. Standard No. 3(d) requires that any request to engage in an activity authorized by the Standards be made through the media coordinator. A request should not be made to the presiding judge. The fact that only one request is received initially does not mean that additional requests will not be filed later, and thus all should go to the coordinator. The presiding judge should not be involved in the granting of a request to use audio or visual equipment unless the media coordinator is unable to obtain agreement among media personnel.

3. Standard No. 4 requires that only equipment which is approved by the presiding judge may be used in the courtroom. The presiding judge must check prior to trial each item of equipment, including both TV and still cameras, to determine whether the item produces distracting light or sound. Once a judge has approved a certain type of equipment, it need not be reinspected for each trial.

4. Standard No. 5(a) provides that the presiding judge must restrict camera equipment to areas open to the public. This means the spectator area behind the rail. It has come to my attention that some judges have permitted cameras to be placed in the jury box or other locations in front of the rail. This is not permissible under the Standards.

5. Standard No. 12 limits the right to use audio or visual equipment in the courtroom to representatives of the news media. Individuals who are simply spectators, relatives, tourists, or curiosity seekers may not use audio or visual equipment in the courtroom.

For use by the committee's court observers, where feasible, questionnaires were prepared by the committee to serve as a basis for interviews with trial judges, counsel, witnesses and jurors. These questionnaires are attached to this report as Appendices B, C, D and E.

It is of some interest to note, as part of the history of the problem under discussion, that on January 27, 1970, the Supreme Court created a committee of 12 persons, which included 3 judges, several lawyers, several people from the media, and one University Professor, to advise the Court on the desirability of modifying or dropping Rule 14. While that committee, in its final report of August 18, 1970, agreed on many matters, on the crucial issues it was sharply divided. Thus, 8 members of the committee favored the broadcasting of court proceedings by radio, whereas 4 were opposed, while the vote was 6-6 on the question of permitting the televising of judicial proceedings. The text of the 1970 report is attached as Appendix F. Following receipt of this report, the Court, by a vote of 4-3, voted to retain Rule 14.

II.

VARIOUS CASES

In the course of its work, the committee was informed by various sources of a variety of experiences in Wisconsin courtrooms relating to the use of photography. A few of these experiences are spelled out in the following sections.

(1) STATE v. DILLABAUGH

This highly publicized case was heard in the Circuit Court of Dane County, before Judge William C. Sachtjen and a jury. The trial began on the morning of June 5, 1978, and ran for 3 days. One of the committee's court observers, Mr. Kim Kodousek, a law student at the University of Wisconsin-Madison, sat through the entire trial, and interviewed most of the participants

afterwards. This summary of the case consists of his observations. The point at issue was the alleged battery of a young boy by a minister.

Our observer wrote a detailed account of the progress of the case, day by day, and then interviewed the major participants (except the jurors) on the basis of the prepared questionnaires. What follows is a reproduction of all the materials submitted by Mr. Kodousek:

June 5, 1978

The equipment in the courtroom consisted of 1 black and white cable TV camera, 1 color "mini-cam" TV camera, 1 movie film camera for TV, and 2 still photographers, each with 2 still cameras.

The three TV cameras, each with one cameraman, were placed in the far right aisle near the front of the gallery, effectively blocking that aisle. The still cameramen were seated in the front row of the gallery. All were reminded of the guidelines as to photographing recesses and bench conferences by the chief bailiff before the voir dire began.

The Madison cable TV station broadcast the proceedings "live" during the day and showed several hours of it each night. A monitor was placed in the hallway of the courthouse, and when it was learned that witnesses in the hall could hear and see the proceedings, the monitor's audio was ordered turned off by the judge.

The sound for the TV cameras was supplied by 4 microphones placed in the courtroom, in addition to the regular courtroom microphones. Two TV mikes were on the counsel table, one was at the judge's bench and one was on the witness stand.

Photographing began during the voir dire as the TV cameras followed the jurors taking their seats. The movie camera could be heard by the observer just before the rail, but only during very quiet pauses. The shutters of the still cameras were clearly audible throughout the trial. No flash equipment or special lights were used by any of the cameras.

At the voir dire the prosecutor mentioned the cameras' presence to the jury, and asked "Are there any of you who feel that the presence of cameras might affect your duties as a juror?" There was no response.

The jurors were instructed not to watch anything on television or view other news media by the judge, but the instruction was not specific as to the televised trial itself. The cameras themselves were apparently no distraction to the jurors, since their eyes rarely, if ever, strayed to the direction of the TV cameras or the still photographers.

Two media-related problems were observed the first day. First, a still photographer requested permission of the bailiff to photograph the gallery. Raising the camera above his head would have been a distraction, the bailiff reasoned, but the photographer was allowed to turn around from his front row seat and take pictures from eye level.

Second, as mentioned above there was some concern that the witnesses, who were excluded from the courtroom, were viewing the trial from the TV monitors in the hallway outside. The sound on these monitors was ordered turned off by the judge, and the witnesses apparently instructed to refrain from watching the live telecast while waiting in the defense counsel's nearby office.

The two still photographers took approximately 53 photos during the first day.

Tuesday, June 6, 1978

When the trial was convened the next morning the media equipment in the courtroom was the same as had been there Monday. However, at the first recess the bailiff received requests from two other still photographers to take the place of the photographers who had originally applied for permission to photograph the trial and who had sat through it the day before. All wanted photographs of the 5-year-old complainant who was to take the stand after the recess. The photographers were from each of Madison's three daily newspapers, and one from the student daily, The Cardinal.

The bailiff relayed the problem to the judge, who allowed all four still photographers in the courtroom for the remainder of the day. The extra two stayed only briefly, however, because the witness was not allowed to testify to the jury. There were never more than two photographers present in the afternoon.

There had been some problem the day before with the microphones on the counsel's table picking up defense counsel-client and co-counsel-counsel conversations. Apparently, if the volume of a home television set was turned up high enough, these conversations could be understood. The bailiff informed counsel of this fact.

One still photographer from the Capital Times brought as his backup camera a Leica viewfinder camera. Unlike the reflex cameras used by all other still photographers at the trial, this camera was extremely quiet and almost inaudible from a seat just in front of the rail. Apparently this type of camera has fewer moving parts.

At least 81 photographs were taken by the still photographers this day.

Wednesday, June 7, 1978

As court was convened, there were three TV cameras and cameramen present and four still photographers in the courtroom. After the defendant took the stand two still photographers left, leaving two in the afternoon.

While the defendant was testifying, his attorney objected to the fact that the defendant was being photographed with one of the exhibits (the paddle used in the alleged battery) in his hand. He objected, for the record, that the prosecutor had made his client pose in a manner "calculated for picture taking and improper."

After the noon recess, one TV cameraman finished setting up his camera after court was convened. Later, one of the TV technicians in the hall came in the court while in session and spoke to one of the cameramen. Both were warned about this later by the chief bailiff.

At least 135 photographs were taken by the still photographers this day.

In-court observation of the trial ended as the jury left for the final deliberation.

Judge William Sachtjen indicated that he delegated much of the responsibility for media problems during the trial to the chief bailiff. The following is a digest of an interview with the chief bailiff at the trial, Sgt. Gordon Butler:

"The rotation problem with the still photographers brought up the question of who has authority to decide the question of which paper gets a seat. The media coordinator should not be connected with any TV station or paper, to avoid problems of favoritism. More details should be provided as to how to deal with the problem of photographers from 4 competing local papers. They don't carry press cards, either, so it was hard to tell just who was authorized to take pictures. The media coordinator should issue color-coded cards for each trial to the media people.

"The TV cameramen should wear headsets hooked up to the technicians in the hall. This would avoid the problem of the technicians coming in to request a certain shot, which happened twice and was very distracting.

"There were problems with the conduct of the still photographers-- some laughed and made comments during the trial. We reserved the two front benches for the newspeople, including the photographers, but the guidelines should set out where the reserved area should be. It also should be clarified whether the still photographers can leave the courtroom to change film and lenses and then come back in. Some had deadlines to meet, so I told them that

they could leave but could not come back in. At another televised hearing this month, the photographers who were late for my instructions were not aware of the standards.

"Since the TV cameras have a long warm-up period, they were turned to the wall during recesses rather than turned off. However, the microphones should be turned off so as not to pick up conversations.

"With the exception of the still photographers trying to freeze each other out, the media people were very cooperative.

"After the verdict was in and court was adjourned, the media people and cameramen requested permission to conduct interviews in the courtroom. The judge granted it."

The following questionnaires were handled by Mr. Kodousek, and are reproduced here as he submitted them to the committee.

QUESTIONS TO BE ADDRESSED TO THE JUDGE

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record the name of the judge and how long he has served as a judge; also note which of the three media were used in the trial: (a) television cameras; (b) radio equipment; (c) still cameras)

Judge William C. Sachtjen. All three media used in the trial.

1. What, if any, influence do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on you during the trial?

I was conscious of their presence, although I couldn't hear the camera shutters, for instance. They had an indirect effect in that a large courtroom with good acoustics was used, which made it easier to hear the witnesses. The cameras made me more aware of my posture, so I sat erect much of the time.

2. Did the presence of (a) television cameras, (b) radio equipment, and (c) still cameras seriously increase your supervisory responsibilities?

I delegated most of the responsibility to the chief bailiff, and I conferred with the media coordinator. The only serious problem was when four photographers (still cameras) from each of the four local papers wanted to get in, and I finally let them all in.

3. If your response to question 2 was in the affirmative, did those responsibilities interfere with your principal duties as a presiding judge?

No, a good bailiff handled all of it.

4. Did the presence in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras produce more letters, telephone calls, et cetera, than you usually receive?

No, there were some comments from acquaintances who had seen me on TV, but I don't get many calls or letters about cases anyway.

5. What, if any, impact do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on the witnesses?

They were more apprehensive, nervous, scared. The fact that it was a full courtroom with a lot of activity may have combined with the presence of the cameras to cause this.

6. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the behavior of counsel?

The cameras affected them in their unconscious actions, in the same way the cameras affected me-- little things like sitting up instead of slouching down.

7. What, if any, problems occurred because of the use of (a) television cameras, (b) radio equipment, and (c) still cameras in your courtroom?

No problems at all. The 5-year-old witness was scared, but it wasn't from the cameras.

8. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

No effect.

9. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

No effect.

10. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

No effect in this case.

11. Describe any requests you received for the prohibition of (a) television cameras, (b) radio equipment, and (c) still cameras, the action you took based on those requests, and the reason(s) for your action.

I received no such requests.

12. Overall, what is your general evaluation of the use of (a) television cameras, (b) radio equipment, and (c) still cameras, in the courtroom?

Basically, I don't believe in them. If I were charged with a crime, I would not want it to be televised or photographed.

Everything went beautifully in this case, but this wasn't a serious enough case. There will be trouble with cameras in the courtroom in other cases.

If the defendant had been convicted, I would have been criticized for not sequestering the jury. As it was, they probably watched themselves on TV at night during the trial.

Defense attorney: Jack McManus, Madison

QUESTIONS TO BE ADDRESSED TO COUNSEL

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Be sure to identify lawyers as to whether they were appearing for defendants or as prosecutors)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you from the tasks at hand during the trial?

The still cameras were too loud, there was too much movement and jockeying for position by the still photographers, especially during dramatic moments when there was a distracting flurry of activity by the photographers.

The television cameras in the hallway outside followed the jurors entering and leaving the jury room, and I think that this had an undue influence on the jurors, giving them almost a celebrity status.

2. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the strategy of litigation you intended to use?

No effect on my strategy, although the prosecutor posed my client (holding an exhibit) for the still cameras.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the manner in which you examined or cross-examined witnesses?

No effect; I was unaware of their presence while I was examining and cross-examining.

4. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on your contacts or relationship with the judge?

No effect on the relationship with this judge, but I can forsee problems with other judges.

5. Did (a) television cameras, (b) radio equipment, and (c) still cameras result in producing more telephone calls, letters, etc., than you usually receive?

I don't know. I ordinarily get a lot of calls because of the kind of cases I take, and this time was no different.

6. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the jury?

There was unnecessary filming of them when they were not in the jury box. This placed an undue influence on the jury, and they may have been caught up in the drama of the thing. The cameras, TV and still, could have affected their judgment and distracted them from their duty.

7. What effect, if any, did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

No effect.

8. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

No effect.

9. Overall, what effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

No effect.

10. If you had a choice, would you have preferred to try the case with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

It made no difference in this case.

11. What overall advantages, if any, do you ascribe to the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

The still cameras had no benefit other than serving the public's need to know.

As far as television is concerned, if they become commonplace in the courtroom, they will act as a deterrent to incompetent attorneys whose knowledge of trial tactics won't meet the public or peer group scrutiny.

TV is an asset in that witnesses who know that their answers will be given wide dissemination will watch what they say. It also serves as an educational process-- the public will learn of the role of the courts, juries and counsel, and the uses of their tax dollars.

Prosecutor, Assistant District Attorney (Dane Co.) Gerald Mowris

QUESTIONS TO BE ADDRESSED TO COUNSEL

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Be sure to identify lawyers as to whether they were appearing for defendants or as prosecutors)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you from the tasks at hand during the trial?

   The clicking of the still cameras was distracting.

2. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the strategy of litigation you intended to use?

   No effect.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the manner in which you examined or cross-examined witnesses?

   No effect.

4. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on your contacts or relationship with the judge?

   I couldn't tell if it had an effect.

5. Did (a) television cameras, (b) radio equipment, and (c) still cameras result in producing more telephone calls, letters, etc., than you usually receive?

The nature of the case made it hard to determine if they had an effect.

6. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the jury?

I have no idea.

7. What effect, if any, did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

Probably no effect.

8. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

I have no idea.

9. Overall, what effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

They had no effect that I could see.

10. If you had a choice, would you have preferred to try the case with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

Unless the shutter sounds could be muffled, I would prefer not to try the case with (c) in the courtroom.

11. What overall advantages, if any, do you ascribe to the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

The nightly replay was helpful.

My only concern with cameras is their effect on reluctant or frightened witnesses. Testifying in public is hard enough without putting their performance on television.

Defendant and defense witness Pastor Wayne Dillabaugh

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

No distraction-- I did not notice their presence while I was testifying. I have become somewhat accustomed to the presence of cameras lately, but I was not distracted nor could I hear them while I was on the stand.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

No effect.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

It probably will result in more letters and phone calls, but I have been staying away from home during the trial.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

It made no difference to me.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

Their presence made no difference either way , as far as I could tell, and made no effect on the veracity of the witnesses.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

One problem was that the attorney-client conversations were picked up by the TV microphones at the counsel table, and this made it difficult to discuss anything with my attorney.

Detective Richard J. Miller, prosecution witness

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

No distraction. I didn't realize that they were there after I took the stand. I have testified before, and you're ordinarily nervous, but the presence of the cameras did not distract me or make me more nervous. I could not hear the cameras while I was on the stand.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

No effect.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

There was recognition the next day from people who had seen me on TV, but no harassment and no phone calls.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

From a policeman's point of view, you're made more responsible for your actions-- you had better be sure of yourself before you take the stand.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

Because of the publicity it was hard to tell. In a regular case you could tell if it had an effect on fairness or not, but because of the nature of this trial, I don't know.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

They don't distract, and their presence is a good influence.

Richard D. Hochsteader, defense witness

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

I heard the clicking of the still cameras, and it does disturb you when you're trying to think. The TV cameras had no effect.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

No effect.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

I expect some tonight. (Interviewed on day of testifying.)

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

They didn't have enough of an effect, they really didn't matter.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

They possibly will have an effect, but I don't know yet.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

They had no effect on my testimony.

Kathleen Brandt, key prosecution witness.

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

There was no distraction-- I did not notice either the TV or still cameras at all during my testimony.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

They had no effect, since I did not notice them once I was on the stand.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

None received (as of one day after appearing on television).

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

It didn't bother me that the cameras were there.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

They allowed both sides to be seen, by bypassing the news and allowing people to see the trial from start to finish. They made the trial more fair in that way.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I think that it's a good idea-- the TV cameras allow people to see the entire trial and decide for themselves.

(2) THE McCOY MURDER CASE

For six days beginning April 24, 1978, Judge James W. Rice, then County Judge in Monroe County, tried a first degree murder case in the La Crosse County Circuit Court. Television and still photography were permitted throughout the trial. The chairman of the Monitoring Committee has had considerable correspondence with Judge Rice. On May 8, 1978, the judge wrote that he had asked the attorneys, the defendant, the jury, the witnesses and the Court Reporter "to be alert during the trial for any distractions the cameras may have caused. I received no complaints." When requested to report his experiences and impressions more fully, Judge Rice wrote in part as follows:

> "In response to your specific questions, there was no interference with my duties as a presiding judge. There was no effort by an attorney, a witness or any participant to play a little bit for the benefit of the cameras. I did feel that I made it a point to sit more alertly, and to be more selective in my choice of neckties each morning, but nothing more.
>
> "Were there any special problems? Only that I spoke to the coordinator prior to the trial as to location of the cameras and to remind them to remain behind the rail at all times.

"I cannot believe that the cameras had any effect on the length of the trial, its outcome or the conduct of counsel. I can believe that some attorneys would ham it up but they would have to be handled on an individual basis. Those involved in my case were professional always.

"I received no letters or phone calls regarding the trial, except from the news people. There is no question, however, that there was more conversation in the community than is normal. People spoke of the hardness of the defendant, the stupidity of a particular witness, of my stern demeanor (I don't think I was) and generally appeared much more interested.

"I have been in favor of cameras because I have felt they would give the public a better flavor of what goes on in a courtroom, rather than the picture TV now gives. I don't think it does as much as I had hoped. The total testimony of a witness, or the total argument of a lawyer, is not presented, just excerpts. This, of course, can only be changed by filming and presenting the whole trial and the commercial media people tell me that is not economically feasible....

"The experience was a success with only one or two very minor negatives. Once, a TV photographer had difficulty dismantling a camera and just once I heard a TV camera whining.

"I think one of the factors which made the experience unremarkable, was that one TV camera was in the courtroom all the time, but was operated only periodically. This, I think, allowed us to forget about it.

"The attorneys were well behaved and the media responsible. I think only good can come from that combination."

At the request of Judge Rice, Mr. Bill Hoel, News Director for WLCX, and media coordinator for the area, wrote to the Committee Chairman, and the following are some of his remarks on the televising of the McCoy murder case:

Coordinating coverage by the media was easy in this instance because of two factors. All local media had already cooperated in covering a nontrial hearing which took two days. This allowed us to get the bugs out of all systems, and to custom build some small pieces of equipment with which to distribute a sound feed to all who needed it. It gave us, secondly, a known quantity, if you will, to present Judge Rice. We were able to respond to his questions about how we'd work in the courtroom with definite answers, because we'd already had experience.

I daresay the fact that Judge Rice is liberal in applying the Supreme Court Guidelines was a major factor in the successful coverage, also. I am of the belief the guidelines are far too

> strict in their construction. They set very tight limits in an area where cooperation between all media is not always available. Judge Rice waived the rules governing number of cameras. Because of this, there were still only three cameras in the courtroom, but two of them were of the same type (film), while only one was of the electronic "TV camera" type.
>
> Our standard mode of operating when in the court was a very low profile. Outside of the presence of three cameras in the far corner of the room, a jury member would have had a hard time distinguishing the rest of the reporters from normal courtroom observers. We use small, portable cassette recorders for radio. These can be held in the lap, and turning them on or off creates no noticeable noise.
>
> Once an hour, radio reporters get up, leave the courtroom, and file their stories for that hour's newscasts. This activity is staggered, so it is not a mass movement, which might be distracting.
>
> All in all, I saw the jury distracted from their concentration on testimony perhaps once or twice during the entire proceeding; and only one or two jurors at each of those times. This doesn't prove any theories, or make any points. It does show me, however, that given proper facilities in which to operate, the media can be a very low profile presence in the courtroom.

At the conclusion of the trial, Judge Rice asked each juror to write him a letter explaining what, if any, effects the cameras had on them. All of the jurors responded. One juror wrote: "I would just as soon see cameras in court discontinued. It was neither a good or bad experience for me." He also said that his wife received a number of calls on seeing him on television, and he expressed the fear that in some cases those could be crank calls. All of the other jurors wrote, in one way or another, that the cameras in the courtroom did not have a distracting impact upon them. Here are some sample comments: "The fact that the trial was televised did not bother me. I was hardly aware they were in the courtroom." "From my own personal experience I would say it did not bother me because I was intent upon trying to hear every single word that each person had to say concerning the case at hand." "The cameras in the courtroom made no difference to me as a juror in the McCoy trial....In listening and concentrating on what was said and presented in evidence, I'd forget the TV cameras and news media were present in the

courtroom." But this juror was apprehensive that the presence of cameras might make witnesses less willing to tell what they know. Another juror wrote: "In my case, it did not interfere with my concentrating on the McCoy trial and I wouldn't be opposed to being on another case which had cameras in the courtroom." Still another wrote: "The cameras in the courtroom during the McCoy trial were no distraction whatsoever as far as I am concerned." Another juror added the thought that he felt that it was "very good" to have cameras in the courtroom, and that he was unaware of them most of the time. Still another reported that the cameras "did not bother" her, and that during most of the trial she was not aware of their presence in the courtroom. Finally, another juror observed that while she was aware of the cameras, they had "little affect" on her; she said that she did not find the cameras distracting, and that she could not detect any impact upon anyone involved in the trial. She also wrote: "I feel that if the cameras in a Court Room can in any way educate the public about our judicial system and make people aware of it's impact in our community, it is certainly a plus for everyone."

(3) TRIAL OF RICHARD TODD BUCK

This criminal case was tried before Circuit Judge M. C. Holz and a jury in the Circuit Court of Milwaukee County. This summary is based on the written observations of the committee's observer, Mr. James H. Kaster, of Milwaukee. The trial ran from July 18 to July 24, 1978. The case involved various sensitive issues. The victim of an alleged second degree murder was a physician with an outstanding reputation in the community. The defendant claimed that the Doctor had subjected him to a homosexual rape attempt, as a result of which, in the heat of passion, he grabbed a kitchen knife and stabbed the victim to death. The defendant's main position was that the crime, if any, was manslaughter, and not murder in the second degree.

The jury was chosen in an extensive two-day voir dire examination, and one of the questions put to the jurors was whether they felt that the use of cameras would affect their impartiality adversely. Those who served on the jury responded to that question in the negative. There were no cameras or radio equipment in the courtroom during the voir dire. Defense counsel James Shellow stated to our observer that he intended to challenge the use of cameras in the courtroom on the ground that it would be injurious to the defendant, in that it would have a negative effect on the impartiality of the jury and the effectiveness of counsel. The jury was sequestered until it reached its verdict.

During the trial, the television cameras were in plain view of the jurors, the judge, counsel, and the general public. Both defense counsel and the judge stated that they preferred to have the cameras in a less conspicuous place. Defense counsel claimed that several jurors were distracted by the cameras being in open view. On the other hand, the prosecutor, Mr. William Sosney, said that he preferred a small camera used openly, rather than a large stand-up camera placed in a back room out of the immediate view of the jury.

Though the trial attracted tremendous interest in the community, involving the death of a prestigious doctor, and very sensitive issues of rape, homosexuality and drug use, the coverage was low-key, and the media were content simply to present the public with but a few significant moments of the trial, such as the opening arguments and the testimony of an important witness. The trial was not covered in its entirety. There was full coverage for the closing arguments, but our observer noted that even so, there was little, if any difference between that day's proceedings, and the proceedings on days when no cameras were

being used in the courtroom. He observed that "the jury seemed completely unaffected. I never noticed any juror turn his head toward the camera. Counsel also seemed unaffected; yet Mr. William Sosney later reported that the cameras made him 'more nervous than usual.' The judge, although it was apparent that he was aware of the presence of the camera, appeared unaltered." During the final argument, defense counsel Stephen Glynn made an issue of the use of cameras; he referred to the fact that others watched parts of the trial on television, and admonished the jury not to be afraid that their verdict might be criticized by viewers. The prosecution made no reference in closing argument to the use of media devices.

Our observer concluded that, "in my own subjective opinion, the cameras did not affect the fairness of the proceedings. The jury was unconcerned, and, I would say, unaffected. Yet, counsel for both sides claimed that they preferred not to have cameras in the courtroom. The judge managed his extra supervisory responsibilities well. The jurors interviewed all agreed that the cameras, etc., had no affect on them. Although they were aware of the presence of these media devices, they claimed it did not alter their deliberation or final decision. My observations support their claims. Judge Holz, however, claimed that the cameras simply add an extra burden on the judge in an already difficult situation, for example, an important murder trial....The defense and prosecution both agreed that they would rather try a case without cameras in the courtroom. Their rationale, however, differed. The prosecutor claimed that media coverage puts the trial in the public eye. For that reason, he claimed, the jury is reluctant to return a harsh verdict. He further complained that camera use automatically gives defense counsel an issue for appeal. Defense, on the other hand, claimed that the notoriety of a covered trial makes the jury more reluctant to return a lenient verdict. According to them, jurors fear the peer pressure resulting from a lenient verdict more

than any pressures resulting from a harsh one."

In response to the queries set out in the prepared questionnaire, the judge expressed the opinion that the use of cameras "is overly disruptive, especially in a difficult case where the judge already has immense responsibility." At the same time, the judge indicated that the added responsibilities did not interfere with his principal duties as a presiding judge. In response to the questions as to whether the use of cameras resulted in more letters, telephone calls, etc. than he usually receives, the judge responded, "definitely." He also thought that the cameras have "a noticeable effect" on the witnesses. In addition, he expressed the belief that the presence of the media in the courtroom had some effect on the behavior of counsel in that they seemed to be more "solicitive of the press so as to have 'their' story told." He stated that the use of cameras did not affect the length of the trial, its outcome, or its fairness. Asked for a general evaluation of the matter, Judge Holz replied: "The use of media devices in the courtroom makes the tasks to be performed by the judge more difficult in an already difficult situation. It upsets the flow of the trial. Further, the state is forced to bear the burden of added expense, such as is caused by sequestration."

Our observer was able to interview 4 jurors. All agreed that they were aware of the presence of cameras in the courtroom. All 4 stated that the cameras had no effect on their deliberations, and that none received phone calls or letters during or after the trial because of the use of cameras. In reply to question as to whether the cameras had any impact on the behavior of the witnesses, all replied, "I don't know." All 4 agreed that they did not believe the cameras had any effect upon the behavior of counsel, or of the judge, or on the fairness of the trial. Asked whether, if they had a choice, they would have preferred to be on a jury with or without cameras in the

courtroom, all 4 declared that they had "no preference," although one of them said that "a murder trial should be a private matter, especially in such a sensitive situation." (Of course, this juror did not seem to understand that no criminal trial is ever a private matter, and that public trials are guaranteed by the Constitution.)

In his responses to the questions put to him by our observer, defense counsel Shellow asserted that the presence of cameras in the courtroom distracted him from the tasks at hand during the trial "regularly." As to whether the presence of cameras affected the strategy of litigation, Mr. Shellow declared that "it affected the basic decision of whether we would have the defendant take the stand in the case." He also expressed the opinion that the cameras had "an obvious effect on one witness,...who was extremely distraught while testifying in front of the cameras." While he conceded that there was a potential for theatrical antics by the judge, he said that the judge conducted himself very well and appeared unaffected by the cameras. Mr. Shellow noted that the use of cameras did not produce more letters, telephone calls, etc. than he usually receives, but as to whether they had any effect on the jury, he responded that it is "difficult to say." He did not believe that the cameras had any effect on the length of the trial. At the same time, he thought that "it is possible that the jury may have come back with a not guilty verdict had the cameras not been used." Our observer points out that defense counsel did not argue for a not guilty verdict at any time during the proceedings, and that the verdict of manslaughter rather than second degree murder was regarded as a victory for the defense. When asked whether he thought the use of cameras had an effect on the fairness of the trial, Mr. Shellow responded, "Certainly. Prosecutor Sosney was obviously responding to camera use during the trial." Finally, Mr. Shellow indicated that he would have preferred to try the case without cameras in the courtroom,

asserting that the practice "unfairly prejudices the jury. Distorts fact finding. Only one juror during the voir dire was candid enough to admit that the cameras might have affected him. The others were 'less than candid,' when they claimed their use would have no effect."

In his responses, defense counsel Glynn said that the cameras distracted him "on occasion," that the presence of cameras affected the choice of exhibits offered into evidence, because of the sensitivity of matters at issue, and he declared that "we changed examination strategy" because of the presence of cameras in the courtroom. He also said that the cameras did not affect his contacts or relationships with the judge, but that he did receive more office calls and calls from television stations than usual. He said that he did not know whether the cameras had any effect on the jury, but he added, "I noticed that one juror was distracted by a TV camera when it was allowed out into the open court room." While in his judgment the cameras did not affect the length of the trial, he added , "I am afraid that it may affect the outcome," when asked about this before the verdict was reached. Asked whether the cameras affected the fairness of the trial, he responded, "I don't know." Finally, asked about his overall preference, he replied: "I would prefer that they not be allowed into the courtroom; however, if they are allowed, I would prefer that their use not be revealed to the jury. Such use of cameras, however, may violate privacy rights of individual jurors." At the same time, he conceded that there may be "theoretical" advantages. For example, a judge normally belligerent to a defendant might be moved to maintain a more objective demeanor. Overall, however, there are more disadvantages than advantages."

Mr. W. Sosney, the prosecutor, said that the cameras made him feel "nervous- more than usual." But he did not think that the presence in the

courtroom of cameras affected the strategy of litigation, or the manner with which witnesses were examined or crossexamined, or his contacts or relationships with the judge. On the other hand, he noted that "more people contacted me to talk about the case than usual," and when asked about the effect of the cameras on the jury, he responded: "It is difficult to speculate on that. Yet, the defense used reverse psychology with the jury. They attempted to get the jury to over-react to the possibility that they might feel pressure to convict. By doing so,....they may have successfully made the jury overly reluctant to convict." Mr. Sosney did not believe that the use of cameras had any effect on the length of the trial, but when asked whether it had any effect on the outcome of the trial, he responded: "It is difficult to speculate. Yet, jurors must feel unusual because of the uniqueness of media coverage." In response to the question as to whether the cameras affected the fairness of the trial, the prosecutor replied: "If anything, it is unfair to the state's interest and to the people of Wisconsin. The cameras made conscientious people reluctant to pull the trigger." Asked whether, if he had a choice, he would have preferred to try the case with or without the cameras in the courtroom. Mr. Sosney replied: "The use of cameras is not only unfair to the people of Wisconsin, it adds an unneeded expense to the trial of cases. For example, the jurors were sequestered in this case, when they otherwise would not have been." Finally, in response to the query as to whether the use of cameras had any overall advantages, our observer quotes the prosecutor as follows: "None. There is not a need for the extra coverage allowed by the use of cameras. The media are there only to present sensational issues to the public, not to satisfy the public's need to know. This is well illustrated by the manner in which the cameras have been used up to this time."

(4) THE CASE OF FILEMON AMARO

Accused of first degree murder and abduction of a hostage in a stolen vehicle, Mr. Amaro was put on trial before a sequestered jury, in Waukesha, on November 27, 1978, with Judge Max Raskin presiding. Public television channel 36, with the full approval of Judge Raskin, broadcast the entire trial live after the jury had been selected. According to a news story written by John Schroeder for the Waukesha Freeman, November 10, 1978, Judge Raskin adopted the following guidelines for this particular trial:

> "The cameras can focus on trial witnesses only momentarily. Raskin said he wants to avoid making the witnesses anxious.
>
> "No closeups of jurors will be allowed.
>
> "The camera is to be placed at the rear of the courtroom to avoid blocking spectators' views.
>
> "Reporters won't be allowed to speak during the trial. That includes a ban on talking even quietly into a microphone."

In a news release dated November 13, 1978, Channels 10/36 noted:

> "Both Judge Raskin and 10/36 General Manager Otto Schlaak, feel that televising this trial is in the interest of the public for the following reasons: it will demonstrate exactly how the court system works, and show the complexity of a murder trial in which the defendant is assured and guaranteed his right to a fair trial. This trial should also prove to the public one of the basic tenets of the American judicial system, that the defendant is presumed innocent until proven guilty."

Furthermore, 10/36 Program Manager, Don Burgess was quoted as follows:

> "We are committed to stay with the trial as long as it lasts and we will not, during the trial's duration, editorialize, opinionate (sic!), or analyze the effects of what happens. We will only televise and report the event as it happens."

Since Mr. Amaro was a Spanish American, some members of Milwaukee's Spanish community protested the televising of the trial, on the ground that it would have the effect of stirring up group prejudice, and tend to reinforce a sense of stereotyping against the Spanish community as a whole. Responding to such complaints, Dr. Schlaak pointed out that while he recognized that at

least part of the Spanish community had honest concerns about the impact of broadcasting the trial, "we would have a very hard time finding any trial where the person being tried didn't reflect on some portion of the community." He also noted that the Milwaukee Sentinel reporter who covered the Amaro case "formed the impression that the two cameras...had little or no effect on the attitudes and demeanors of the participants. The reporter said that he saw no 'camera glances' by anyone involved in the case. He said that with the red 'on the air' lights disconnected and a minimum of movement while 'panning' from one side of the courtroom to another, both cameras were very inconspicuous. Generally, the reporter said, everyone involved forgot that the cameras were present." (Milwaukee Sentinel, December 1, 1978).

Editorial opinion in responsible newspapers in the area rejected the notion that the televised trial involved an ethnic slur. In an editorial published by the Milwaukee Journal on November 30, 1978, it was noted that there was great public interest in the trial because of the unusual nature of the incident in June which led to the trial. "We think that fact, rather than any effort to highlight alleged deviant behavior on the part of Hispanics, led to the choice of this case for live TV coverage...No reasonable viewer is likely to be swayed by racial or ethnic bigotry as a result of watching the trial on TV. The unreasoning bigots among us doubtless would hold their prejudices if these proceedings were sealed." The editorial went on to argue that while minorities are fully justified in saying that media images are often negative, the remedy lies in insisting on balanced coverage, but that "it does not lie in an ill-advised effort at restraining the flow of information."

In addition, an editorial published in the Waukesha Freeman on November 28, 1978, took the position that the Amaro trial was not singled

out for televising because the accused was of Spanish extraction; it merely happened that this trial was the first involving a murder charge in the area since judges in Wisconsin were first given permission to allow television cameras in the courtroom. The editorial also noted that almost every defendant could make similar objections on such grounds as nationality, sensitivity or an alleged right to anonymity. "The judicial system depends for its credibility and the protection of those brought before it on the principle that proceedings shall be open to the public. To tamper with that requirement can only be detrimental to our system of jurisprudence and the philosophy supporting it." In an editorial published on December 11, 1978, as the trial was drawing to an end, the Freeman expressed the opinion that "it can be said without arguments to the contrary that the experiment of television in the courtroom has successfully passed its first critical test in Wisconsin." The editorial argued that the experience disproved all of the old objections, such as the danger of distracting from the essential dignity of the court proceedings, the distraction of witnesses, the degrading of the court, or the creation of misconceptions in the mind of the public.

Similarly, an editorial published in the Racine Journal Times on December 12, 1978, pointed out that "the Amaro case was not singled out for television because the accused happened to be Hispanic. There has been considerable public interest in the proceedings because of the shocking nature of the crimes." It also noted that Channel 36 "has taken pains to avoid turning courtroom drama into a carnival atmosphere." It concluded with the observation that "as long as news photographers are discreet and don't interfere with the proceedings, they should be allowed in courtrooms so the public can get a better understanding of our system of justice."

In a letter to the committee dated January 9, 1979, Judge Raskin made the following comments about the inferences he drew from his experience with the Amaro case:

From this experience I draw the following conclusions:

(a) I found the placement and use of the two cameras in the courtroom to be unobtrusive, not to have distracted trial participants and not to have interfered with the progress or process of the trial under the guidelines previously established by the court.

(b) No editorial or critical comment was permitted to be made by channel personnel from court premises.

(c) Two problems arose with respect to witnesses refusing to be televised while testifying. One was a witness for the state. The District Attorney asked that the cameras be turned off while he is testifying for the reason that he feared for his life. In view of the fact that this witness was under a criminal charge and was about to be tried, I believed that compelling him to testify with the cameras turned on might interfere with the state's prosecution of that witness on an unrelated charge.

The second instance arose when the defendant who had entered a plea of not guilty by reason of mental disease or defect, and who had already been found guilty by the jury in the first phase of the trial; said that he would refuse to testify in his own behalf during the second phase if he was to be televised while testifying.

In order to avoid a constitutional issue I agreed that while he is testifying the cameras were not to televise him. He testified and no further complications arose.

(d) All witnesses except expert witnesses relating to the mental condition of the defendant were sequestered. This presented the problem whether any witness was watching the telecast away from the court house before being called to testify. I informed counsel that any witness may be voir dired outside the presence of the jury with respect to whether a witness listened or watched other witnesses when testifying. No such requests were made.

(e) The above situation could become a problem and my recommendation for the future would be that all lay subpoened witnesses including police officers receive a written order from the court banning them from listening to other witnesses testifying, provided such a request is made by counsel. The fact that a witness who violates the order may not be permitted to testify would tend to insure enforcement of the order.

(f) Throughout the trial I did not permit any inquiry by counsel touching upon the subject of the presence of television cameras. My position was that the presence or absence of cameras should not be made a subject of controversy or comment in the presence of the jury. I looked upon the presence of the cameras as pieces of equipment and no different than the presence of a newspaper reporter sitting in court and making notes.

(g) Of significance was the fact that I directed channel personnel that the red beam lights in front of the cameras indicating that the particular subject was being televised were to be turned off. This in no way affected the televising process and at the same time gave no indication to the witness or anyone else that the camera was in use.

(h) From my observations I could detect no impact upon Jurors, Witnesses or Counsel by reason of the presence of the television cameras. Nor was there any adverse impact upon the defendant, other than what was noted previously.

(i) I found the administrative responsibility in moving the trial along no different than any other times. I experienced no burden with the television cameras being present in court.

(j) There was complete cooperation from all television and channel personnel.

(5) BAIL HEARING OF RAY MENDOZA

This hearing was held before Circuit Judge Robert W. Landry, on September 15, 1978. The issue was whether Mendoza's bail money should be forfeited as a result of Mendoza's alleged violations of conditions relating to his trial. Audio and visual material were used in the courtroom; two cameras were used, one being carried and the other being permanently stationed in the back of the courtroom. According to the committee's observer, the stationary camera was out of the immediate sight of those within the courtroom, and thus presented no problem of distraction. The carried camera, however, presented more of a problem. The cameraman carried the camera into the courtroom, before the judge arrived on the scene, to shoot a close-up of defense counsel James Shellow. He also shot a close-up of those members of the Mendoza family who were present, and our observer records that they were "noticeably uncomfortable as a result." There being no jury, our observer noted that it was

difficult to assess the impact of the media. "The professionals (the judge and counsel) were apparently unaffected. Some of the camera techniques were potentially objectionable; yet the fairness of the proceeding was untarnished."

The committee observer was able to interview both Judge Landry and assistant district attorney T. Hammer. Judge Landry, who has served on the bench for over 24 years, responded to the questions put to him with commendable candor. Asked whether the cameras exerted any influence on him, he responded: "None that I am consciously aware of. Everything is on the record anyway. I really don't consider that publicity makes a difference, since our trials are already public proceedings." But Judge Landry also pointed out that as a result of the presence of cameras in the courtroom, "there is an increase in supervisory responsibilities. Yet, once the newspeople get used to your guidelines, the procedure is self-executing." Asked whether the additional responsibilities interfered with his principal duties as a presiding judge, he replied in the negative. In reply to the query as to whether the use of cameras produced more letters, phone calls, etc., he replied: "None- at least I have never had that problem in the past." Asked about the impact of the cameras on witnesses, Judge Landry replied: "I think it does make the witnesses more nervous at first. However, the effect becomes considerably diminished as the testimony of a witness continues." As for the behavior of counsel, the judge observed: "There is probably what I would consider a small effect on counsel, which might make them more theatrical." Judge Landry was asked whether problems occurred because of the use of the cameras, and he replied, "None", and he gave the same response to the question as to whether the length of the trial was affected. He also declared that the use of cameras had no effect on the outcome of the proceeding. He explained: "Under the controls as presently prescribed by the Wisconsin Supreme Court,

the possibility of abuse is minimal. However, if the media violate the rules, they could affect the outcome. For example, I know of an incident in Judge Barron's courtroom where, contrary to specific instructions by the judge, the media reported the jurisdictional award to the public. Even considering such potential for abuse, I still do not favor prohibition of news coverage in the above forms."

Judge Landry was asked whether he had received any requests to prohibit the use of camera and sound equipment in the proceeding. His reply was as follows, as recorded by the committee's observer: "In the Mendoza trial, both state and defense counsel vigorously argued that television not be allowed in the proceeding. I denied the request. That denial was appealed to the Wisconsin Supreme Court, and affirmed. Application is presently before the United States Supreme Court on the same issue. I denied the request because I felt that the Wisconsin Supreme Court had made a policy decision to allow cameras and other media in the courtroom, and that therefore, they should be allowed in the great majority of cases." Asked for an overall judgment, Judge Landry responded as follows: "Overall, I am favorably disposed to media presence. I feel the public has a right to know what is happening in a courtroom. However, I wish that the media would attempt to present a more objective picture of what is happening in the courtroom. The public should be proud of the good job that the courts are doing for them. However, when the public only sees the sensational issues being presented, they get a perverted idea of what is happening in the courtroom."

Assistant district attorney Hammer, responding to the question as to whether the cameras exerted a distracting influence upon him, replied in the negative, but added, "However, since this was a non-jury hearing, my answer does not reflect my true attitude toward camera use." He said that the use

of cameras in the courtroom did not affect the strategy of litigation he intended to use, and did not have any impact on his contacts or relationship with the judge. As for the impact upon the manner of examining or cross-examining witnesses, Mr. Hammer said, "There was an effect. I refrained from asking questions I otherwise would have asked because part of the proceeding was to be seen on T.V." Whether he received more letters and telephone calls than usual, he replied that "it is impossible to say right now, immediately after the proceeding." Mr. Hammer said that in his judgment the use of cameras did not affect the length of the proceeding or its essential fairness. Asked if he had an overall preference, he replied: "I would try a case without cameras. Witnesses have a tough enough time responding to the normal pressures of the courtroom without the added pressure of publicity. Furthermore, it is distracting for all involved." Finally, when asked whether he saw any overall advantages in the use of cameras in the courtroom, Mr. Hammer replied: "If the entire proceeding were filmed, the films could be used as a training technique for law students. However, erratic as the coverage is, it serves no useful purpose whatsoever."

(6) THE SENTENCING OF ROXANNE STEVENS

In October, 1978, Roxanne Stevens, on a no-contest plea, was convicted for neglecting her children, two of whom suffered smoke inhalation and died after a fire in their apartment. Cameras were permitted during Stevens' initial appearance in September, and at a session on October 11, when she waived preliminary hearing, pleaded no-contest, and was found guilty by Circuit Judge Clarence W. Nier of Brown County. On motion of her counsel, however, the cameras were banned from the courtroom for the sentencing. The following excerpts from a lengthy account of this matter written by reporter

Ellen Zettel and published in the Green Bay Press-Gazette on November 19, 1978, explain what happened:

> A victim of telephone harassment, the woman has alledgedly suffered from the publicity her case has brought. She has been embarrassed and ridiculed. With television and still cameras focusing upon her at the sentencing, she might be reluctant to speak on her own behalf.
>
> Her attorney, Geoffrey Dowse of Wisconsin Indian Legal Services, claims that "the presence of audio and visual equipment in the courtroom has previously caused her great mental anguish and has subjected her to undue public scrutiny."
>
> As a result, the equipment will be prohibited from the courtroom upon the order of Brown County Circuit Judge Clarence W. Nier, who will preside during the sentencing of the 23-year-old mother.
>
> News professionals, however, have some trouble understanding the reasons for the ban. This is one instance of the media's attempt to define what constitutes "reasonable cause" for prohibiting audio-visual equipment during this trial period of access to the courtroom, which started April 1 and ends March 31, 1979.
>
> Dowse requested the ban on audio-visual equipment from the courtroom on Oct. 17. He has nothing against cameras being set up outside the courtroom-- "just not while we're in there.
>
> "Sentencing is so important," he explains. "Any feeling of unease is going to influence how I argue for sentencing and it's going to influence Roxanne if she's going to make a statement."
>
> Cameras were permitted during Stevens' initial appearance in September and at a session on Oct. 11 when she waived her preliminary hearing, pleaded no contest and was found guilty by Nier.
>
> The attorney says that the presence of cameras works to destroy "personal" quality of an appearance before a judge for sentencing. "Sentencing is a one-on-one thing between a judge and a defendant," he says.
>
> Nier says he granted Dowse's request as the presiding judge in the Stevens case "because her attorney pointed out to me that she had great exposure at the time she waived her preliminary hearing, and as a result of that exposure, if cameras were in the court at the time of sentencing, she might decide to stand mute. I would want her to tell me her story."

Nier and Dowse say they respected Stevens' wishes "to stay as much away from the public as possible."

According to Dowse, "Roxanne has been living in a fishbowl ever since this happened last summer.

"She had some phone calls from people in our community that called her a murderer," he explains. "These phone calls came from pretty sick people who consider her sick."

Dowse says his client has not complained about annoying phone calls lately. Most of the calls were apparently provoked just after news of the fire and the subsequent deaths of the two children was reported.

He adds that Stevens has been living in Oneida with her mother, who has been in poor health and was hospitalized shortly after the incident. Her mother was terribly shaken by some of the phone calls which she answered.

"The media in general made such a big story of the case that it has been almost impossible for Roxanne to live a normal life," he says.

Dowse stresses that he thought that photographers and camera operators "did a good job last time." He feels that, for the most part, they abided by the state Supreme Court's guidelines regarding audio-visual equipment in the courtroom.

However, he points out the instance when a television camera operator "chased Roxanne down the street" just after her last court appearance.

There seems to be no question among news personnel that reasons such as the fear of physical harm or of undue embarrassment serve as just cause for banning cameras from the courtroom. But they hesitate at allegations that the defendant may not be able to speak in his or her own behalf with cameras present.

Charles Leonard, news director at WBAY-TV and media coordinator for the 8th Judicial District, says he felt the reasons given for the ban-- namely, that the defendant suffered "great mental anguish" and "undue public scrutiny"-- are "a little foolish."

He notes that cameras were permitted at Stevens' two previous court appearances. "It seems to me that barring the cameras from the courtroom is like closing the door to the barn after the cows have escaped," Leonard says, adding that he is speaking as a journalist and not as the media coordinator.

Leonard says the fear that Stevens might stand mute is "Probably a fairly valid cause" to ban cameras. "You would have to know the individual before you make that kind of judgment, but there are people who just can't talk before a camera."

He adds that Nier, as chief judge of the district, has been "quite supportive" of the media in their attempts to bring cameras into court. "He's been very good to us."

(7) OTHER PROCEEDINGS

Wisconsin Bankers' Assoc. v. Mutual Savings & Loan Co.

This case involved the use of cameras in a court of appeals. Oral argument was heard on September 25, 1978. In this instance, Judges Decker and Cannon presided. The case involved the use by savings and loan associations of sight drafts. According to the banks, this practice constituted an infringement on areas traditionally reserved for banks.

The committee's observer made the following comments:

"The attorneys made their arguments without ever looking at the cameras set up in the back of the Court of Appeals. While one was busy speaking, the others were preparing rebuttal to what was being said. Although Attorney Brody appeared nervous, it was difficult to determine whether the camera was the source of his hesitant manner.

"The judges involved, Judge Decker and Judge Cannon, also appeared unaltered by the camera presence. They were engrossed in the argument being presented. It would seem that in a proceeding of this nature - without a jury - they could more easily disregard the media activities. Their supervisory responsibilities seem lessened immensely when there is no possibility of jury prejudice.

"As Attorney Friedman told me after the proceeding, the camera presence has little effect on trial attorneys and judges. They are hardened to publicity and accept it as an every-day occurrence. It is only when a jury is present that prejudice will possibly result."

Observations from Circuit Judge Peter G. Pappas of LaCrosse

Circuit Judge Peter G. Pappas, who sits in the Circuit Court of LaCrosse County, wrote a letter to the chairman of the committee on May 9, 1978 recounting some of his experiences with the media people and expressing several opinions about the use of cameras in the courtroom. Portions of this letter follow:

"At the time that the rules were announced by the Supreme Court, there was pending in my Court a court matter involving annexation of a portion of the Town of Medary by the City of La Crosse which had great interest in the community and the first hearing was scheduled for March 29th, 1978 and even though that was prior to April 1st, I felt that, in view of the fact, that a jury would not be involved, that would be an excellent opportunity, to allow radio and T.V. into my Courtroom for the first time.

"I met with the media representatives and they made arrangements for the placing of their equip ment, etc., and frankly, I felt that it went very well. There was no posturing by the attorneys, as a matter of fact, very soon after the trial started, I think that we were all pretty well oblivious to the presence of the media.

"There was a subsequent hearing on April 18th, 1978 and it also was covered by the media, although not to the extent that it had been covered the first time. Again, there was nothing unusual that happened, and no problems posed insofar as conduct of the trial was concerned.

"Early in April there was a trial involving charges of Soliciting of Prostitution and Keeping a House of Prostitution, and although the media had evidenced some interest in it, the only coverage was a newspaper photographer coming in and taking some still shots and one of the T.V. reporters came in with a hand-held camera and took a few pictures. Prior to that trial, I had had some indication that this particular reporter was coming in because she had approached me and told me that she would be coming in and wondered if I had any objections. I had told her that I had no objections except that I did not want any pictures taken of the State's undercover agents. No objection was raised by the reporter to this and, as a matter of fact, she went out of her way to make certain that she did not get any shots of the undercover agents. She even went so far as to delete part of her film when she discovered she had the backs of the heads of two of the agents which had gotten into her picture because of the scope of the lens.

Since then, they have come in on an occasional basis, although I have not had the same set-up of equipment that they had at the March 29th hearing....

"So far, the only media that we have had interested are the two local television stations, the Television Department of Western Wisconsin Technical Institute which has a connection with cable television and then the three local commercial radio stations plus the University radio station.

"When the jury was present for the trial I have referred to, they did not seem to be at all aware of the fact that there were

any photographers in the Courtroom taking any pictures. As I was observing them closely, their attention did not go from the witnesses and the attorneys to the back of the Courtroom to be curious as to what might be going on.

Our local media people, even though very competitive, have been very cooperative and responsible. Now, this attitude might change if the rules are eventually changed so that their admission to the Courtroom will be more or less a matter of right, rather than on a trial basis, as at the present time, but I do not anticipate any problems that cannot be handled. I could foresee if we had a trial which was so notorious as to bring in network people, and if that should ever happen, then I am quite certain that the Court would probably have to lay down some pretty tight rules because otherwise, I have no doubt that they will do anything at all possible to gain some sort of competitive advantage.

As the year goes on, and if I have any additional experience which would lead me to come to a different conclusion, I will certainly let you know. But at this point, I see no problems attendant to allowing cameras, radio, and television into the Courtroom."

A Fire and Police Commission Hearing

On July 5, 1978, Mr. William A. Adler, an attorney in Eau Claire, and a member of the committee created to monitor the use of photography in the state's courtrooms, wrote a letter to the chairman of the committee regarding his experiences with the media. Since his account and observations have a direct bearing upon the problems confronting the committee, the letter is herewith reproduced in full:

"I have just completed a highly publicized Fire and Police Commission trial that covered a period of some seven weeks. The hearings were conducted in the Altoona High School Gymnasium with spectator crowds of from 200 to 300 people filling chairs set up on the gym floor and bleacher seats along the walls. The commission members, counsel and principal parties, including court reporter, were all seated at a table grouping out on the gymnasium floor. There were times when the crowd reaction was quite disturbing -- on one occasion to the point where the president of the Police and Fire Commission announced that he was going to move the hearing to smaller quarters. With adequate warning the crowd became somewhat subdued at later hearings.

"In this atmosphere there was constant monitoring by representatives of radio, television and the news.

"The television cameras were moved from point to point in the hearing room and the camera itself was backed up by a bank of several rather high intensity lights. The intensity was such that the commission members complained of the lights shining in their face on at least one occasion.

"Around the table where the commission members, attorneys, etc. were seated, were several microphones. The floor in the area had many wires from the audio and tv equipment.

"During the course of the trial, radio and media people would place hand-held recording devices on the tables and in proximity to the witnesses to record what was being said.

"In short, the entire atmosphere was violative of practically all of the standards for maintaining decorum that have been set up by the Court for the year study period. Of course, this was not a court hearing, it was a commission hearing.

"Because of my membership on your committee, I was interested in what my personal reaction would be to the presence of the media and I also made inquiry of some of the witnesses and other parties involved.

"My own reaction was that I was almost completely oblivious to what would be considered a very distractive atmosphere. I recall having to watch my step when handling exhibits so that I didn't trip over some of the wires strewn around the floor. I recall several instances when I was giving a somewhat prolonged address to the members of the Police and Fire Commission that I had to adjust my position, at the direction of the media people, so that I was either in line with the television camera or I didn't block the television camera's view of what was going on. I recall that there was some distraction resulting from either inoperation of the microphones or my not being in a position to be picked up properly by the microphones and the various recording devices. However, these distractions, I did not feel, affected my presentation of my client's case.

"Considering the exaggerated atmosphere I was in and relating that atmosphere to what we would hope to find in the courtroom in a proceeding that complied with the rules that have been set up, I do not feel that camera noise and the other possible areas of distraction set forth in the Dillabaugh report would have affected me.

"As far as the reactions of witnesses, commission members, etc., they indicated an initial awareness of the media and media equipment but did not feel that their presence had any particular affect on them as far as giving their testimony or the nature of their testimony. In other words, their awareness appeared somewhat transitory and once they began answering questions, they seemed to be oblivious to the effect of media.

"As to the overall effect on the hearings themselves and the people who had to make the ultimate decision, this would be extremely difficult to evaluate since the matter was quite emotional, was highly publicized, and, the overall psychological impact would be impossible to evaluate at this time.

"I send you these comments for purposes of allowing the committee to contrast a completely uncontrolled situation with the court cases that will be reviewed under controlled, restrictive circumstances."

Case of Larry Solles and Steven Drenning

Solles and Drenning were convicted in August, 1976, in Rock County, of the shooting death of a gas station attendant in Janesville, and given the maximum sentence of 60 years. At the hearing for a new trial, Judge Gerald Jaeckle ordered cameras and tape recorders out of the courtroom, on motion of the public defender's office. This was reported in the Janesville Gazette for April 11, 1978, but no reason was given in the press account for the judge's order.

Case of Barbara Hoffman

At the arraignment on a charge of murder, in the Circuit Court for Dane County, Hoffman's lawyer, Mr. Donald Eisenberg, objected to the presence of cameras in the courtroom, alleging that their presence there constituted a "cruel and unusual punishment." Mr. Eisenberg claimed that his client was "so frightened" that she could not talk in front of the cameras. Mr. Eisenberg, however, did not ask the court, by motion, to bar cameras, apparently being content merely to state his point. All this was reported in a story appearing in the Capital Times of Madison on April 7, 1978.

Case of Paul T. Jones, Jr.

According to a story which was published in the Milwaukee Journal on April 25, 1978, Circuit Judge Robert W. Landry of Milwaukee barred

television and radio recording in the murder trial of Jones. However, Judge Landry did permit the use in the courtroom of still cameras operated by newspaper photographers. The judge, according to the news account, expressed concern about possible references by witnesses to a particular juvenile witness; the witness had informed the court that he feared for his safety if identified. The matter was appealed to Chief Judge Michael T. Sullivan who, on April 25, 1978, declined to overrule Judge Landry's decision in this case. [1/]

III.

FEDERAL AND STATE VIEWS

The special interest of the American legal profession in the photographing of trial proceedings dates from its concern with the events that occurred at the Lindbergh kidnapping trial in 1935. Unquestionably, the trial of Bruno Hauptmann was conducted in a circus atmosphere, with some 700 newsmen and 129 photographers milling about the little town of Flemington, New Jersey. See State v. Hauptmann, 180 A. 809 (N.J. 1935), cert. denied, 296 U.S. 649 (1935). The events at Flemington led to the adoption by the House of Delegates of the American Bar Association, in 1937, without debate, of Canon 35 of the Canons of Judicial Ethics, a rule banning all still photography and radio from the courtroom. In 1952 the Bar Association added television to Canon 35. Rule 53 of the Rules of Criminal Procedure for the U.S. District Courts is to the same effect, providing as follows: "The taking of photographs in the courtroom during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the courtroom shall not be permitted by the court." Thus it is clear that neither still photography nor televising of proceedings is permitted today in any federal court.

[1/] The observer's report of State v. Patri tried in La Crosse County before Judge Frederick Fink was not received in time to be included in the report. Because the observer Joseph Zobin did a thorough job of interviewing witnesses and all of the jurors, his report is included as Appendix I.

There is, however, at the present time, no federal due process rule which forbids the states to permit photography in their own courts. The key decision on this point, Estes v. Texas, 381 U.S. 532 (1965), did not, as is often asserted, prescribe a specific rule on the point. Estes, a much-publicized financier, was convicted in a Texas District Court of the offense of swindling, after a trial of great notoriety, portions of which had been televised and broadcast over his objection. While Estes succeeded in persuading the U.S. Supreme Court to set aside his conviction on the due process ground that he had been denied a fair trial, only four Justices voted in favor of a per se rule which would flatly forbid the televising of trials by state courts over objection. The opinion of the Court, pronounced by Justice Clark, was only a plurality opinion of four Justices. Justice Harlan concurred separately in the judgment of the Court, but he rejected the concept of a per se rule against the televising of courtroom proceedings. He voted to reverse on the ground that all things considered, this particular criminal trial, of such great notoriety, had been flawed by the failure of the trial judge to control his environment, but he added that "forbidding this innovation,...would doubtless impinge upon one of the valued attributes of our federalism by preventing the States from pursuing a novel course of procedural experimentation." (381 U.S. 587) Thus, in a very brief explanatory opinion, Justice Brennan stated: "I write merely to emphasize that only four of the five Justices voting to reverse rest on the proposition that televised criminal trials are constitutionally infirm, whatever the circumstances.... Thus today's decision is not a blanket constitutional prohibition against the televising of state criminal trials." Justice White, who also dissented, observed that we do not know enough about the impact of television to warrant the framing of a general per se rule. In his dissenting opinion, Justice

Stewart pointed out that the techniques of public communication are subject to continuous and unforeseeable change, and that the Court should not interfere with the considerable discretion of the trial judge. Even Justice Clark, who wrote the plurality opinion, concluded with this observation: "It is said that the ever-advancing techniques of public communication and the adjustment of the public to its presence may bring about a change in the effect of telecasting upon the fairness of criminal trials. But we are not dealing here with future developments in the field of electronics. Our judgment cannot be rested on the hypothesis of tomorrow but must take the facts as they are presented today." (381 U.S. 551)

It must be noted that the Estes case was not only inconclusive on the point at issue, but was decided fifteen years ago. Most assuredly, there have been tremendous improvements since then in the equipment and techniques available for television and still photography. It may be said with some confidence that the electronic media have developed technologically to the point that still cameras and broadcasting equipment are no longer obtrusive. Furthermore, many states have proceeded on the assumption that the Estes case did not settle the issue. Indeed, all over the country electronic equipment has been used in many aspects of judicial proceedings, to record testimony, to record police line-ups, to record confessions and statements by material witnesses. Furthermore, there were several instances of the broadcasting of trials in the 1950's in a few states, e.g. Texas, Kansas, Oklahoma and Idaho. By order of February 27, 1956, the Supreme Court of Colorado voted to permit the photographic coverage of certain trials, provided that all parties involved had given their prior permission. The Florida Supreme Court began an experimental year of broadcasting trials by order effective July 5, 1977. At the present time, the Florida Court has under advisement the question of

making the experimental rules permanent. Today about fourteen states permit some sort of broadcasting of judicial proceedings under a wide variety of rules. Thus, the Supreme Court of Louisiana began a one-year trial for one district court, beginning February 23, 1978. The highest courts of Minnesota and Montana have recently authorized one or two-year experiments with broadcasting trials. In New Hampshire, broadcasting is entirely within the discretion of the trial judge. In Tennessee broadcasting is permitted only in the State Supreme Court. New Mexico is conducting an experiment which requires all participants in the trial to give their consent. Since 1975 the Supreme Court of Alabama has permitted photography subject to authorization by the presiding judge, and any participant may request that the cameras be turned off. Currently, the issue is a live one in several states, including California, Kentucky, Ohio and Oklahoma.

Thus, it is worth noting that in August, 1978, the Conference of Chief Justices, by a vote of 44-1 adopted a resolution which would relax ABA Canon 35. The resolution declared that the supervising appellate court "may allow television, radio and photographic coverage of judicial proceedings in courts under their supervision consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice." On the other hand, in February, 1979, the House of Delegates of the American Bar Association voted against courtroom photography.

The experiment with courtroom photography in Florida has stirred up a great deal of interest. The guidelines were put to a serious test in the widely-discussed murder trial of Ronny Zamora. Dade Circuit Judge Paul Baker, who presided over the Zamora trial, declared: "The First Amendment right to a public trial means just exactly what it says." Defense counsel

Ellis Rubin advanced, without success, the very unique defense of "television insanity," but this made for a very dramatic trial which riveted the attention of hundreds of thousands of Floridians. Trial Judge Baker, at its conclusion, pronounced the conduct of the case as worthy of being viewed as a "success." During the experimental year in Florida, several murder trials were televised in their entirety, as well as an insurance fraud trial in Dade County. One judge turned off the cameras to prevent the filming of testimony by several federal informants who were living under new identities, and one judge forbade the filming of a 16-year old rape victim. A report by three professors at Florida Technological University concluded that 76.6% of the 130 circuit judges who responded to a survey indicated that the television cameras caused no "serious distraction" in court, and 68.1% of these judges said that the television cameras had no "adverse influence" on witnesses. Furthermore, of the 52 jurors who were questioned, 56% said that the television cameras were not distracting, while 35% thought they were. Said Chief Justice Ben Overton at the end of the experimental year: "There have been no substantial problems presented in this court with regard to the pilot program." As reported in a story by Al Messerschmidt in The Miami Herald for June 30, 1978, however, there is formidable opposition in Florida to making the experimental rules permanent, from the Florida Bar, the state's Conference of Circuit Judges, the Florida Public Defender's Association, and prominent private defense attorneys. By a 4-3 vote, the Supreme Court of Florida refused to extend the experiment beyond the designated year, and the matter is still under advisement.

On January 3, 1979, the Chairman of this Committee wrote a letter to all circuit judges in Wisconsin, requesting their reaction to whatever experience they may have had, or were aware of, with regard to the impact of photography

and radio broadcasting in the courtroom. Specifically, the judges were requested to state an opinion, with or without supporting rationale, as to whether or not they approved of the televising of courtroom proceedings, and they were encouraged to comment on the guidelines prescribed by the Supreme Court for the experimental year. The Committee attaches the highest importance to the views of the judges who preside over our general-jurisdiction trial courts, for, after all, they are right on the firing line, and must live with the rules laid down for their guidance. It is highly regrettable that a majority of the 181 circuit judges did not reply, at least by the day which had to be treated as the cut-off date for the preparation of this report. But, of the 55 circuit judges who did reply, 44 judges indicated, in one fashion or another, that they approved of the televising of trials, and did not believe that photography in the courtroom defeated the holding of fair trials. Candor suggests that it ought to be stated that approval was expressed in many different ways, some with whole-hearted enthusiasm, and other rather grudgingly. On the other hand, only 8 circuit judges clearly expressed opposition to the use of photography in the courtroom, although here again the opposition was expressed with varying degrees of emphasis. Only one circuit judge went so far as to pronounce the year's experiment a "flop". On the other hand, Judge Richard G. Greenwood of Green Bay spelled out a fully reasoned statement of opposition to the televising of trials. He alluded to the technological difficulties involved, the reporting out of context where only portions of a trial are televised, "the natural fear and anxiety" of witnesses, though he was not worried about the impact upon judges and lawyers, the belief that sensitive personal matters, as in divorce cases, should not be exposed to the view of the public at large, and the conviction that the open court room suffices for those who are interested in finding out how our courts operate. Three responding judges expressed no opinion.

Some 11 judges said, in various ways, that our courtrooms are not physically adequate to accommodate television cameras and should be altered accordingly. On the other hand, 7 judges took the position that the alteration of existing courtrooms to accommodate television is not an expense which the county should be asked to assume. Apparently the tenor of their remarks on this point was that since television is a commercial enterprise, it ought to pay its own costs. Perhaps a short answer would be that the televising of trials, at least in the view of this Committee, is in the public interest. Several judges stressed the importance of retaining intact the authority of the trial judge over his courtroom. Several judges thought that television is interested mainly in sensationalism, and broadcasts only bits and pieces of trials, from which it follows, in their view, that broadcasting by television is not likely to be as educational to the general public as is generally asserted. Five judges took the position that it is too early to arrive at a firm policy, and that the experimental period should be extended in order that a final decision can be made on the basis of a more substantial experience.

The Committee regrets that it heard from only a minority of the circuit judges, although 55 returns out of a possible 181 represent a substantial sample worthy of our attention. No doubt, if we waited longer, more replies would drift in, but in order to get this report prepared in time for submission to the Court on the agreed-upon date, we had to be content with the replies that had already come in. On the whole, the Committee reads the replies as indicating that a substantial majority of the circuit judges either approve of the televising of trials, or at the very last, do not disapprove of doing so. The Committee attaches considerable weight to this body of expert opinion.

IV

BASIC POLICY VIEWS OF THE COMMITTEE

The basic concept upon which this report rests was well stated by Justice Douglas in a leading case decided in 1947: "A trial is a public event. What transpires in the courtroom is public property. . . . Those who see and hear what transpired can report it with impunity. There is no special prerequisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it." Craig v. Harney, 331 U.S. 367, 374. In a larger sense, there is a growing feeling in the country, as reflected in many open-meeting state statutes and in such federal statutes as the revised Freedom of Information Act, that the general public has a right to know what is going on in all branches of government at all levels. As stated by Justice Joseph A. Boyd, Jr., of the Supreme Court of Florida, in a recent law journal article: "The dramatic political and governmental revelations of recent years have inspired a renewed interest in public affairs. Citizens are becoming increasingly conscious of their right to be informed about the activities of their local, state and federal governments. Public institutions are responding to this growing citizen awareness by becoming more open to the public view." ("Cameras in Court: Estes v. Texas and Florida's One Year Pilot Program," University of Miami Law Review, Vol. 32, 815, September, 1978).

Accordingly, the committee concludes unanimously that under appropriate guidelines pronounced by the Supreme Court and administered by the state's trial judges armed with a broad discretion to exercise necessary control over the judicial environment, still photography, radio broadcasting and

television cameras should be permitted in the courtrooms of the state. The committee is well aware of the objections generally voiced by those who oppose photography in the courtroom, and it is not prepared to assert that the objections are wholly without merit. There is some danger of distraction; it is quite possible that some witnesses will be affected by the knowledge that they are on the television screens of the community; and it is even possible that some attorneys and judges will alter their behavior because of the cameras, but while in some cases they may be tempted to strike special poses, on the other hand, the presence of cameras may well have the effect of reducing irascible behavior from the bench and rudeness from the counsel table.

On the basis of the evidence which has come to the attention of the committee, it has concluded that the advantages of permitting audio-visual coverage of the courtroom outweigh the disadvantages, and that within rules duly pronounced by the Supreme Court, and with more experience with the problems involved, and the development of better and more efficient cameras, procedures can be followed which would not defeat the right of parties involved in litigation to have fair trials.

So far as the broadcasting of courtroom proceedings by radio is concerned, the committee is unaware of any serious objections. Many modern courtrooms are already equipped with sound systems, and in such instances all the radio people have to do is to plug their equipment in the existing system. Even where courtrooms do not have electronic sound systems, the amount of equipment which the radio people would have to bring into the courtroom would be so minor in bulk, and so unobtrusive, as to present no problems worth discussing. Of course, the operator of the radio broadcasting apparatus should

not be permitted to speak into the mike in the courtroom while the trial is proceeding, but apart from this, the committee is unaware of any problem which would make radio broadcasting of judicial proceedings unwise or undesirable.

Similarly, the committee sees no serious problem in permitting still photography on the part of still photographers, even though the committee recognizes a sound problem. Of course, as the present rules make clear, no flash or other special lighting should be permitted, but modern still cameras are now so efficient and so sensitive that good pictures can be taken with ordinary lighting in the room. Still photographers should not be permitted to move about the courtroom for picture-taking purposes, however, and the judge and the bailiff should make that clear, and if a press photographer persists in violating this simple rule, then that person's right to take pictures in the courtroom should be withdrawn. Furthermore, the committee sees little point in insisting that once in the courtroom, the still photographer must not leave the chamber until the next recess. It is reasonable to ask that person to be in place before the proceeding begins, but once the photographer has the desired pictures, he or she ought to be permitted to leave the room. After all, visitors sitting behind the rail are free to come and go, and do come and go, during the proceedings, and the committee can see no good reason for insisting that still photographers must remain in their seats until the next recess, once they have the pictures they want.

While many people assert that television exerts a distracting influence on the participants in the courtroom proceedings, the evidence before the committee suggests that the distraction does not rise to such dangerous levels as to defeat the objective of holding fair trials. It is also argued that television has the result of imposing additional responsibilities upon an already over-burdened judge who, at least in serious criminal trials, has

many other things to do, but the general tenor of responses from trial judges in this state is to the effect that not much extra work is involved, and that as the media people and the judges and lawyers get accustomed to the processes involved in television, and particularly as there is growing familiarity with the rules of the court on the subject, trial judges will not find this a source of unduly great added work. The committee believes that it might be wise to ask the television operator to turn off the red light, which can be done very easily, and which seems to signal attention unnecessarily. The committee also believes that it would be desirable to remodel our courtrooms so that the television cameras are actually walled off from the bulk of the courtroom, and thus are as out of sight and unobtrusive as possible. Certainly it is possible to remodel the larger courtrooms for this purpose, and it is suggested that hereafter new courtrooms should be designed with this in mind, to provide separate facilities behind screens or walls for the location of the cameras.

The committee recommends that special mention should be made with respect to the photographing of the victims of sexual assault, very young children, undercover agents, relocated government witnesses, and in cases involving trade secrets, domestic relations and child custody. Furthermore, the sound of conferences between counsel and client, or between counsel and judge, should not be broadcast. Finally, the committee recommends the adoption of a rule which would control the photographing of the jury, to the extent that individual jurors are identifiable, except in extraordinary situations where consent has been given. It is obvious that in many courtrooms it would be physically impossible to photograph a witness or other participant in the proceeding which did not in some measure include the jury. What the committee thinks should be forbidden are tight shots which actually identify individual jurors. The committee is deeply concerned about the dangers involved in any

invasion of jury anonymity; jurors are drawn at the last moment from the general mass of the community, and disappear into the community when the trial is over.

As John H. Wigmore once wrote:

> "We are good friends of jury trial. We believe in it as the best system for a free people in the world's history. In spite of all suggestions to substitute the trained judge of fact, we believe that a system of trying facts by a regular judicial official, known beforehand and therefore accessible to all the arts of corruption and chicanery, would be fatal to justice. The grand solid merit of jury trial is that the jurors of fact are selected at the last moment from the multitude of citizens. They cannot be known beforehand, and they melt back into the multitude after each trial." (Journal of the American Judicature Society, Vol. 9, p. 61, 1925).

If this is a proper view of the nature of the jury, it would seem to follow that the anonymity of jurors should be respected. An interesting letter from Circuit Judge Thomas H. Barland of Eau Claire, dated 18 January 1979, supports this position. He writes: "I have excluded the photographing of jurors. The cameramen have not been happy with this rule, but with one exception, all of the jurors quizzed as to their reactions to be photographed on a criminal case, have responded that they do not wish to be photographed. They are afraid of undue publicity or outside pressure." Similarly, Mr. James C. Eaton, the District Attorney for Barron County, wrote to the committee as follows on 10 January, 1979: "Frankly I found the cameras somewhat distracting but not a real source of irritation. My concern, however, lies with complaints of the jury who came to me after having seen the cameras and then having seen their picture all over the front pages of Minnesota and Wisconsin newspapers. The jury members that approached me were very concerned and, in my opinion, somewhat frightened by the attention. Anonymity is not a luxury in a rural community as it would be in an urban area."

V

SPECIFIC RULES RECOMMENDATIONS

The Committee closes this report with some recommendations for the revision of the guidelines which the Supreme Court adopted at the beginning of the experimental year. The Committee recommends the use of the word "Rules" instead of "Guidelines." There seems to be a formality about the term "Rules" which makes it more appropriate to serve as a body of procedural law, whereas the term "Guidelines" seems to convey an informal and tentative intent on the part of the Court. Furthermore, wherever the word "standards" has been used, the word "rules" has been substituted. In addition, the Committee recommends that wherever "presiding judge" is used, the term "trial judge" should be substituted, since the phrase "presiding judge" has a meaning of its own in Wisconsin.

This report deals with the Court's Guidelines seriatim, and adds comment and suggests changes where they seem warranted.

Court Guideline No. 1

Authority of Trial Judge

(a) These rules of conduct do not limit or restrict the power, authority, or responsibility otherwise vested in the trial judge to control the conduct of proceedings before the judge. The authority of the trial judge over the inclusion or exclusion of the press or the public at particular proceedings or during the testimony of particular witnesses is applicable to any person engaging in any activity authorized by these rules.

Suggested Addition

(b) The term "trial judge" includes any judicial officer who conducts a public proceeding.

Comment: This rule seems to be altogether proper, and only a minor change in its language is recommended. Many circuit judges, either in direct testimony or by letter, have indicated how important it is that the traditional authority of the trial judge to control the courtroom environment should be preserved.

Furthermore, no rules can be or should be so detailed as to cover all possible contingencies, and the judge must have elbow-room in which to make decisions relating to problems growing out of the presence of the electronic media in the courtroom. The new subsection (b) is intended to include other judicial officers, such as court commissioners, who conduct public judicial business.

Court Guideline No. 2

Media Coordinator

> The media covering each administrative district shall designate a coordinator to work with the chief judge of the administrative district and the trial judge in a court proceeding in implementing these rules.

Suggested Restatement:

> (a) The Wisconsin Freedom of Information Council shall designate for each administrative district a coordinator who shall work with the chief judge of the administrative district and the trial judge in a court proceeding in implementing these rules. Geographically large administrative districts shall be subdivided by agreement between the Council and the chief judge, with a coordinator designated for each subdistrict.
>
> (b) Where possible, the trial judge shall be given at least five days' notice of the intention of the media to bring cameras or recording equipment into the courtroom. In the discretion of the trial judge, this notice rule may be waived where cause for such waiver is demonstrated.

Comment:

The Committee believes it desirable to focus responsibility as precisely as possible for the selection of media coordinators. The original rule is much too vague and open-ended. The Wisconsin Freedom of Information Council, of which Mr. Robert H. Wills, editor of the Milwaukee Sentinel is currently President, is almost ideally suited to carry out the selection function. The Council is sponsored by the Wisconsin Associated Press, the Broadcast News Council, the United Press International, the Society of Professional Journalists, Sigma Delta Chi, the Wisconsin Broadcasters' Association, the Wisconsin Press Photographers, the Wisconsin Newspaper Association, and the

Wisconsin Universities Journalism Council. Clearly this umbrella organization represents most of the print and broadcast media in the State. It already has a standing committee, one of whose functions is to select regional coordinators.

Several witnesses who appeared before the Committee, or communicated with it by letter, called attention to the fact that some of the ten administrative districts are much too large to be supervised by a single coordinator. For example, District 10 consists of 13 counties; District 9 has 14 counties; and there are 12 counties in each of Districts 6 and 7. Accordingly, it is suggested that the rule require the creation of subdistricts, at least in the very large districts, by agreement between the chief judge and the Council.

Finally, many circuit judges have stressed the desirability of requiring the media to give them some notice of their intention to bring electronic equipment into the courtroom. They expressed considerable irritation with media representatives descending upon them at the very last moment before proceedings are to get under way. The committee believes it is reasonable to require the media to give the judge reasonable notice of what they plan to do. One judge suggested two weeks' notice, but five days' notice seems to be adequate and probably more likely to be workable. Of course, there is always the possibility of exceptions, and the judge should have discretion to waive or shorten the notice rule if good cause is demonstrated.

Court Guideline No. 3

Equipment and Personnel

(a) One portable camera (either 16 mm sound on film, self-blimped, camera, or videotape electronic camera), operated by one person is authorized in any court proceeding. One additional camera operated by one additional person is authorized if a request to film or tape the proceeding is received from a person or organization which does not have a camera of the same type as the first camera authorized. One additional camera operated by one additional person is authorized to permit a person or organization to televise live or to film the entire court proceeding from beginning to end. A maximum of three cameras are authorized under this rule.

(b) Two still photographers, each using not more than two cameras with not more than two lenses for each camera, are authorized to take photographs for the print media in any court proceeding.

(c) One audio system for radio broadcast purposes is authorized in any court proceeding. Audio pickup for all media purposes must be made through any existing audio system in the court facility. If no suitable audio system exists in the court facility, microphones and related wiring must be unobtrusive.

(d) The media coordinator shall be responsible for receiving requests to engage in the activities authorized by these rules in a particular court proceeding and shall make the necessary allocations of authorizations among those filing the requests. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude all audio or visual equipment from the proceeding.

Suggested Restatement:

(a) Three television cameras (film, videotape, live), each operated by one person, are authorized in any court proceeding. Priority consideration will be extended to one of the three cameras to televise an entire proceeding from beginning to end.

(b) Three still photographers, each not using more than two cameras, are authorized to take photographs for the print media in any court proceeding.

(c) The trial judge or the chief judge may authorize the use of additional cameras at the request of the media coordinator in extraordinary court proceedings or may limit the number of cameras where physical circumstances require limitation.

(d) One audio system for radio broadcast purposes is authorized in any court proceeding. Audio pickup for all media purposes must be made through any existing audio system in the court facility, when practical. If no suitable audio system exists in the court facility, microphones and related wiring must be unobtrusive.

(e) The media coordinator shall be responsible for receiving requests to engage in the activities authorized by these rules in a particular court proceeding and shall make the necessary allocations of authorizations among those filing the requests. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude all audio or visual equipment from the proceeding.

Comment :

The slight change in subsection (d), is based on the fact that some court sound systems would not satisfy the requirement of adequate broadcasting.

The Committee believes that the original Court guidelines, which ruled out more than three television cameras or two still cameras, are unduly restrictive. There is no persuasive reason why, at least in a large courtroom, in the case of a trial commanding unusual public interest, the judge should not be permitted to admit more than 3 television cameras or more than two still cameras. For example, five television cameras were present in one of Dane County's larger courtrooms for the arraignment of two state legisators on credit card abuse charges. Furthermore, there does not seem to be any persuasive reason why a still photographer should be limited to two lenses for each camera. A demonstration before the Committee indicated beyond any doubt that changing lenses is a very quick and simple operation that should create no problems of distraction at all.

Court Guideline No. 4

Sound and Light Criteria

Only audio or visual equipment which does not produce distracting light or sound may be used to cover a court proceeding. Artificial lighting devices must not be used in connection with any audio or visual equipment. Only equipment approved by the trial judge in advance of the court proceeding may be used during the proceeding.

Comment: This guideline should remain as is.

Court Guideline No. 5

Location of Equipment and Personnel

(a) The trial judge shall designate the location in the courtroom for the camera equipment and operators. The presiding judge shall restrict camera equipment and operators to areas open to the public, but the camera equipment and operators must not block the view of persons seated in the public area of the courtroom.

(b) Camera operators shall occupy only the area authorized by the trial judge and shall not move about the courtroom during the court proceeding. Film, tape, or lenses must not be changed during the court proceeding. Equipment authorized by these rules must not be moved or changed during the court proceeding.

Suggested Restatement:

(a) The trial judge shall approve the location in the courtroom of audio-visual equipment and operators.

(b) Camera operators shall occupy only the area authorized by the trial judge and shall not move about the courtroom for picture taking purposes during the court proceeding. Equipment authorized by these rules may not be moved during the court proceeding.

Comment :

The Committee suggests two changes in subsection (b). One is to forbid camera operators from moving about the courtroom for picture taking purposes. Otherwise, we see no very good reason why a photographer may not, for example, leave the courtroom to go to a toilet, or for that matter, why that person may not leave the courtroom once he or she has the desired pictures. It seems to the Committee wholly unnecessary to insist that once a still photographer has taken pictures, that person must remain seated until the next recess. The photographer ought to have the same freedom to come and go that other members of the public enjoy. What we want to forbid is a camera operator jumping around from place to place during a proceeding to get different shots. We also suggest deletion of the second sentence of (b) on the ground that it serves no useful purpose and is unduly restrictive. Demonstrations before the Committee indicated that film, tapes and lenses can be changed without causing any noticeable distraction or commotion. Actually, with modern equipment they are very simple operations that are accomplished in a few seconds. Finally, the second sentence in subsection (a) is superfluous. The Committee believes that it is sufficient to require the approval of the trial judge.

Court Guideline No. 6

Courtroom Light Sources

Modifications in the lighting of a court facility may be made only with the approval of the trial judge. Approval of other authorities may also be required.

Comment: Leave as is.

Court Guideline No. 7

Conferences

Audio pickup, broadcast, or recording of a conference in a court facility between an attorney and client, co-counsel, or attorneys and the trial judge held at the bench is not permitted.

Comment: Leave as is.

Court Guideline No. 8

Recesses

Audio or visual equipment authorized by these rules must not be operated during a recess in a court proceeding.

Comment: The Committee is unaware of any compelling consideration that justifies this rule. Newspaper reporters are certainly free to move about the courtroom during a recess and talk to anyone who will talk to them, and it is not at all clear that the operators of television cameras should be denied the same privilege. Accordingly, it is suggested that this guideline be dropped, or restated as follows:

Recesses, Periods before and after Court

Audio or visual equipment authorized by these rules may be operated during recess in court proceedings and before and after court, subject to reasonable restrictions imposed by the trial judge to maintain proper decorum and security and to avoid any photography or broadcasting which would impair the right to a fair trial.

Court Guideline No. 9

Use of Evidence

Any film, videotape, photography, or audio reproduction made as a result of these rules is inadmissible as evidence in any court proceeding.

Suggested Restatement:

Any film, videotape, photography, or audio reproduction made in a court proceeding as a result of these rules is inadmissible as evidence in any appeal or retrial of the same action.

Comment: The thought occurred to the Committee that the cameras may record a fresh crime actually occurring in the courtroom. Surely such photography could be used as evidence in a later trial for that crime.

Court Guideline No. 10

Resolution of Disputes

A dispute as to the application of these rules in a court proceeding may be referred only to the chief judge of the administrative district for resolution as an administrative matter. An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any person or organization seeking to exercise a privilege conferred by these standards any order or ruling of a presiding judge or chief judge under these rules.

Suggested Restatement:

(a) A dispute as to the application of these rules shall be referred by the trial judge, after making a record, to the chief judge of the administrative district for final resolution. An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any person or organization seeking to exercise a privilege conferred by these rules any order or ruling of a trial judge or chief judge under these rules.

(b) At the conclusion of a proceeding, the media shall have standing to litigate in the appellate court the validity of decisions made under these rules.

Comment: The slight change in the language of 10(a) is to make it clear that the trial judge must give reasons for the decision appealed from, and that the decision of the chief judge is final.

The new section 10(b) is designed to give the media standing to litigate in the appellate court legal issues growing out of decisions made by trial judges and/or chief judges under these rules. While the media are not parties to the cases themselves, the committee believes that they ought to have some way to test in an appeals court the legality of decisions made under these rules. Such a procedure would promote the rule of law so far as the agencies of mass communication are concerned and free them from dependence upon the actions taken or not taken by the parties in particular cases. For example, a defendant who has been acquitted in a criminal case has no reason or standing to appeal any error alleged to have occurred in the course of the trial, but it may happen that in the course of the trial the judge made a ruling or rulings directly affecting the freedom of the media to function as they deem essential and raising legal issues which a higher court ought to have jurisdiction to resolve. Whether it is constitutionally proper for the Supreme Court to separate appealable issues in this fashion and confer standing on a nonparty are questions which the Committee believes are for the Supreme Court to resolve.

Committee Members Edward Hinshaw, James Hoyt, Richard Bauer, Nancy Mersereau and Anne Rossmeier make the following minority statement: To make it clear that these rules do not preclude other legal actions which may be important to the news-gathering process, we propose the following language be added to Rule 10(b):

> The foregoing limitations on appeals or requests for supervisory relief from the appellate court apply only to orders or rulings which prospectively deny or limit the use of audio or visual equipment in the courtroom. They do not limit or restrict the power, authority or responsibility of the appellate court to review orders or rulings even though related to or arising from such recording or photography, which otherwise affect such persons or organizations, including, without limitation, contempt citations and restraints on publication.

Court Guideline No. 11

Prohibition on Photographing at Request of Participant

A trial judge may for cause prohibit the photographing of a participant with a film, videotape or still camera on the judge's own motion or the request of a participant in the court proceeding.

Suggested Restatement:

(a) A trial judge may for cause prohibit the photographing of a participant with a film, videotape or still camera on the judge's own motion or on the request of a participant in a court proceeding. In cases involving the victims of crimes, including sex crimes, police informants, undercover agents, relocated witnesses and juveniles, and in confession hearings, divorce proceedings and cases involving trade secrets, a presumption of validity attends the requests; the trial judge shall exercise a broad discretion in deciding whether there is cause for prohibition. This list of requests which enjoy the presumption is not inclusive; the judge may in his or her discretion find cause in comparable situations.

(b) Individual jurors shall not be photographed, except in extraordinary instances in which a juror or jurors consent. In courtrooms where photography is impossible without including the jury as part of the unavoidable background, such is permitted, but close-ups which clearly identify individual jurors are prohibited. Trial judges shall enforce this rule for the purpose of providing maximum protection for jury anonymity.

Comment: As the Court knows, and this was reflected in the explanatory statement circulated to all judges by the Chief Justice on 21 April 1978, there has been a great deal of discussion as to the precise meaning of "cause" within the scope of Rule 11. While the Committee believes it would be unwise to spell out to the last precise detail just what constitutes good cause, it does hold that to some extent specific content may be supplied by including the suggested additional language.

Committee Members Edward Hinshaw, James Hoyt, Richard Bauer and Nancy Mersereau make the following minority statement: While we support the revised Rule 11, we do so in the spirit of compromise.

In our judgment any proscription of photography or recording is inconsistent with the intent and spirit of the original Supreme Court experimental guidelines. This should not, however, suggest that we are insensitive to the right of privacy of certain classes of individuals. Our preference would be to continue the original Guideline 11, with the language of clarification contained in the letter of Chief Justice Beilfuss dated April 21, 1978, addressed to all judges.

Court Guideline No. 12

Inapplicability to Individuals

The privileges granted by these rules may be exercised only by persons or organizations which are part of the news media.

Comment: Leave as is.

For the convenience of the Court, the amended rules endorsed by the Committee are restated in Appendix H.

VI

CONCLUSIONS

The Committee recognizes that the case for permitting photography in the courtroom is not a simple one, nor is it a one-sided case. It attaches great weight to the objections voiced by those who fear that the introduction of photography into the courtroom will defeat the right to a fair trial. The most persuasive and best thought out statement of objections to courtroom photography which was submitted to the Committee came from Robert J. Paul, the Deputy State Public Defender. As part of this report, Mr. Paul's statement is attached as Appendix G. Members of the Court may wish to read this statement. While the Committee does not share all of the fears that Mr. Paul has spelled out, it believes that the views he has expressed are shared by many, in and out of the legal profession, and are worth serious consideration.

The Committee believes that while problems have arisen in the past, and will in the future, when cameras are allowed to operate in the courtroom, on balance the advantages to society to be derived from courtroom photography outweigh the disadvantages. So far as radio broadcasting and still photography are concerned, the Committee has had little difficulty in reaching a positive conclusion. The debate centers on the use of television in the courtroom. The Committee takes the position that television is here to stay; it is not only a fact of life, but a very important fact of life in our society. The television people are, like the newspapers, in the business of gathering and disseminating news. In fact, it is widely believed that more people rely upon television for news than upon newspapers. It is said that the television companies are private enterprises in the business of making money. It is hardly necessary to recall that newspapers are not eleemosynary institutions, but are also published for profit. It is true that television stations are likely to concentrate upon sensational cases, but the same can be said for newspapers. In any event, in the case of both the print media and television, we have no choice but to rely upon the judgment of the professionals as to what is truly newsworthy. Whether a particular event is newsworthy is a matter of informed judgment, best made by those whose everyday business it is to make such judgment. An item may be newsworthy one day, and not another, depending on what is going on in the society covered by the particular media. So long as we continue to believe in a free press, and a free press is specifically guaranteed by the United States Constitution and the Constitution of the State of Wisconsin, then we must recognize that one essential element of that freedom is the right to decide the issue of the newsworthiness of an event. Furthermore, the committee believes that with further experience, as the judges, lawyers and media get

accustomed to operating under duly constituted rules, difficulties encountered so far will be smoothed away. The day is not far distant when photography in the courtroom will arouse no more excitement than the presence of newspaper reporters in the courtroom.

Accordingly, the Committee recommends:

1. In general, the guidelines or rules pronounced by the Court, as amended by the Committee, should be adopted as a permanent set of rules, it being understood, of course, that the Court will always be free to reconsider its position in the future, if events dictate reconsideration.

2. Radio broadcasting, still photography, and television cameras should be permitted in the courtroom, subject to strict observance of the rules of the Court, and subject also to the understanding that the presiding judge at a trial has a wide discretion to control the judicial environment, because ultimately it is his or her responsibility to assure to all parties a fair trial.

In making these recommendations, the Committee recognizes that various broad objectives must be pursued. It is vitally important that not only should justice be done in our courts, but that justice should appear to be done. Litigants are entitled to fair trials, and all persons who are involved in court proceedings should be treated with respect for their essential dignity as the citizens of a free society. At the same time, trials are public events; our tradition frowns upon secrecy in government, and few events are more abhorrent in our historical experience than secret trials. The guarantee of a public trial, Justice Black once wrote, "has always been recognized as a safeguard against any attempt to employ our

courts as instruments of persecution." (In re Oliver, 333 U.S. 257, 270, 1948). The essential problem is to find a proper balance between these various interests. The task of discovering points of balance between various interests, however, is no novelty in the law. The Committee believes that in respect to the subject matter of this report, an acceptable balance has been struck. If future experience should indicate that the rules are not suitable, then it is within the province of the Supreme Court to revise them. In the present state of our knowledge and available technology, the Committee is satisfied that the amended rules it has recommended to the Court represent a policy with which we can go forward with confidence.

This report was approved by a unanimous vote of the committee on March 24, 1979

David Fellman, Chairman

William Adler

Richard Bauer

William J. Duffy

William F. Eich

Edward Hinshaw

James Hoyt

Nancy Mersereau

James Peter O'Neill

Anne Rossmeier

Michael T. Sullivan

APPENDIX A

CORRESPONDENCE/MEMORANDUM — STATE OF WISCONSIN

Date: April 26, 1978 File Ref:

To: Professor David Fellman, Chairman
Committee on Audio-Visual Equipment in Courtrooms

From: Chief Justice Beilfuss

Subject: Audio-Visual Equipment in Courtrooms

The Supreme Court in its orders concerning the one year experiment with the use of audio or visual equipment in courtrooms provided for the appointment of your committee. The committee is to monitor and evaluate the use of audio or visual equipment in courtrooms during this experimental period and is to file a report with the Court no later than March 1, 1979.

The purpose of the Court in appointing the Committee was to have an independent body advise the Court on the success, failure or problems with the use of audio or visual equipment in courtrooms, whether the use of such equipment should be permitted on a permanent basis, and if so, under what conditions. If the committee concludes that such equipment should be authorized on a permanent basis, it should prepare proposed rules in its report.

The committee in gathering information upon which to make its report should rely upon the experience of its members, a review of reports in the news media on the use of the equipment in courtrooms, reports to the committee made by judges who preside over trials at which audio or visual equipment is used, the reports of staff members who may observe the use of the equipment in the courtrooms, and any other information the committee believes relevant.

The Committee is expressly authorized to request judges to file with the committee reports on their experiences with the equipment, and all judges in the state are requested to prepare such reports for the committee.

The committee may employ observors upon such terms and conditions as may be authorized by the Chief Justice or his designee.

The members of the Committee are entitled to be reimbursed for their expenses in connection with service on the committee in accordance with the Supreme Court's travel expense regulations.

William Mann, Supreme Court Commissioner, is designated to serve as reporter for the committee.

BFB/skk

APPENDIX B

QUESTIONS TO BE ADDRESSED TO THE JUDGE

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record the name of the judge and how long he has served as a judge; also note which of the three media were used in the trial: (a) television cameras; (b) radio equipment; (c) still cameras)

1. What, if any, influence do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on you during the trial?

2. Did the presence of (a) television cameras, (b) radio equipment, and (c) still cameras seriously increase your supervisory responsibilities?

3. If your response to question 2 was in the affirmative, did those responsibilities interfere with your principal duties as a presiding judge?

4. Did the presence in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras produce more letters, telephone calls, et cetera, then you usually receive?

5. What, if any, impact do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on the witnesses?

6. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the behavior of counsel?

7. What, if any, problems occurred because of the use of (a) television cameras, (b) radio equipment, and (c) still cameras in your courtroom?

8. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

9. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

10. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

11. Describe any requests you received for the prohibition of (a) television cameras, (b) radio equipment, and (c) still cameras, the action you took based on those requests, and the reason(s) for your action.

12. Overall, what is your general evaluation of the use of (a) television cameras, (b) radio equipment, and (c) still cameras, in the courtroom?

APPENDIX C

QUESTIONS TO BE ADDRESSED TO COUNSEL

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Be sure to identify lawyers as to whether they were appearing for defendants or as prosecutors)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you from the tasks at hand during the trial?

2. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the strategy of litigation you intended to use?

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the manner in which you examined or cross-examined witnesses?

4. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on your contacts or relationship with the judge?

5. Did (a) television cameras, (b) radio equipment, and (c) still cameras result in producing more telephone calls, letters, etc., than you usually receive?

6. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the jury?

7. What effect, if any, did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

8. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

9. Overall, what effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

10. If you had a choice, would you have preferred to try the case with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

11. What overall advantages, if any, do you ascribe to the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

APPENDIX D

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

APPENDIX E

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

APPENDIX F

THE UNIVERSITY OF WISCONSIN
NORTH HALL
1050 BASCOM MALL
MADISON, WISCONSIN 53706

DEPARTMENT OF POLITICAL SCIENCE

18 August 1970

To: Members of the Committee on Courtroom Photography

From: David Fellman

Dear Colleagues:

I am enclosing, for your file, the final Report of our committee, revised in accordance with suggestions that came to me since the last meeting of the Committee. I am also enclosing copies of the letter of transmittal to the Court. You will observe that I have requested that the Committee be discharged. I have also indicated our willingness to meet with the Court to discuss the Report.

May I take this final opportunity to thank you for the constructive manner in which all of you cooperated in this assignment. I deeply regret that we could not produce a unanimous report, but I hope that what we have accomplished will be of some assistance to the Court as it confronts once more the problems of courtroom photography.

THE UNIVERSITY OF WISCONSIN
NORTH HALL
1050 BASCOM MALL
MADISON, WISCONSIN 53706

DEPARTMENT OF POLITICAL SCIENCE

18 August 1970

Chief Justice E. Harold Hallows
Supreme Court Chambers
State Capitol Building
Madison, Wisconsin 53702

Dear Chief Justice Hallows:

In behalf of the Advisory Committee to Recommend Rules on Use of Sound and Camera Equipment in the Courtroom, appointed by order of the Court on 27 January, 1970, I herewith submit to you its final report.

While all members of the Committee have signed the report, and while there were large areas of agreement, as spelled out in the report, I regret to say that on crucial questions there was a great deal of disagreement among them. On all questions concerning which agreement could not be achieved, the report indicates where each member of the committee stands.

I have been instructed by the Committee to inform you that all of its members are ready and willing to meet with the Court to discuss this report, if the Court so chooses.

This report concludes the work of the special advisory committee, and it therefore now requests that it be discharged.

I am enclosing a sufficient number of copies of the report so that some will be available for the press, should the Court decide to release this document to the press. If you need additional copies, I will be glad to supply them, since my secretary has kept the stencils.

All members of the Committee join me in thanking the Court for this opportunity to be of some service to the cause of the administration of justice in Wisconsin.

Sincerely yours,

David Fellman

David Fellman
Chairman

DF:nl

Final Report

COMMITTEE TO RECOMMEND RULES ON USE OF SOUND AND CAMERA EQUIPMENT IN THE COURTROOM

I

Pursuant to the mandate of the Supreme Court in reference to the desirability and feasibility of amending Rule 14 of the Code of Judicial Ethics promulgated by the Supreme Court of Wisconsin, the Committee advises as follows:

Rule 14 reads:

> "A judge shall not, when it will interfere with the judicial process or fair trial, permit any radio or T.V. reproductions or taking of pictures in the courtroom during recess or before or after proceedings, or in adjoining corridors or offices; nor shall he permit any radio or T.V. reproductions or taking of pictures in the courtroom at any time during judicial proceedings.
>
> Comment: The rule applies to all judicial proceedings but shall not be applicable to investiture, ceremonial, or naturalization proceedings."

The Committee was constituted by order of the Court on January 27, 1970. The order of the Court read as follows:

> "This court has under consideration for sometime a petition requesting it to reconsider and modify Rule 14 of the Code of Judicial Ethics. The court has heard arguments and has seen demonstrations by the news media of sound equipment and of cameras in the courtroom. While the court has not decided that Rule 14 should be modified, it is interested in being more fully informed on the question of whether specific uniform rules of court can be devised for promulgation by the supreme court which would recognize reasonable demands of the news media to take pictures and to record voices in the courtroom and at the same time not tend to endanger the right to a fair trial by any litigant or to degrade the dignity of the court or to interfere with the administration of justice. Such rules must be specific as to type and amount of equipment permissible in a courtroom, the time and manner of its use, the distance from the subject, the supervision of the

court over the use of the equipment, necessary prohibitions on the use of such equipment, whether any reproduction should be limited to news purposes, and other conditions or necessary restrictions. Such recommendation of specific rules shall be advisory to the supreme court in its consideration of the motion to modify Rule 14."

The Committee has discussed Rule 14 very thoroughly in several meetings. It held one meeting in Milwaukee, in the courtroom of Judge Steffes, where representatives of the various media put on a demonstration through the staging of a mock trial by students of the Marquette Law School. Various technical aspects of still and television photography and radio recording were presented in their present state of technology.

II

While the Committee has been unable to produce a unanimous report, there is a considerable area of agreement. This report will first summarize the subjects as to which there is a general concensus.

1. The Committee wishes to call attention to the fact that in its present form Rule 14 does permit some picture-taking in the courtroom during recess or before and after proceedings, or in adjoining corridors or offices, with the permission of the judge. While the Rule admonishes the judge not to permit any interference with the judicial process or with a fair trial, he does have discretion to permit a limited amount of recording and picture-taking in or near the courtroom except during actual judicial proceedings. It is possible that the representatives of the various media have not been aware of the discretionary authority which is vested by Rule 14 in the trial judge, and that under it some picture-taking is permitted.

2. The members of the Committee agree that it would not be objectionable for the Supreme Court to permit an occasional televising of a trial,

in whole or in part, strictly for educational purposes, by a responsible broadcaster. The Court should be satisfied that the purpose of the filming is wholly educational, that all of the parties have consented, and that the entire process is under the strict supervision of the presiding judge. The Committee recommends that on the rare occasions where an educational filming is desired permission should be sought directly from the Supreme Court itself.

3. Members of the Committee agree that still photography creates fewer problems than television photography or voice recording for radio purposes, and a majority of members agree that it should be permitted, with appropriate safeguards. They recommend that no flash bulbs should be permitted, that hand-held cameras are to be preferred, and that no tripods should be used unless they are properly screened from view.

4. Members of the Committee also agree that voice recording for radio presents fewer problems than television, and that therefere there are fewer objections to recording for radio broadcasting than to the televising of court proceedings.

5. Members of the Committee also agree that if the televising of court proceedings is permitted, undoubtedly television stations will be highly selective, in that they will televise only a few trials, and not televise all trials routinely. For reasons of expense, time and public interest, a television station will only wish to televise an occasional trial; thus the station will have to pick and choose among all trials which are held in the community, and this factor of selectivity will unquestionably affect the proceedings in some fashion, by drawing special public attention to a few trials deemed unusually newsworthy.

6. While the Committee is divided as to the desirability of permitting still photography in the courtroom while court is in session, and radio and television broadcasting of actual judicial proceedings in the courtroom, its members agree that it is possible, from a technical point of view, to record or televise a trial without any serious physical obstruction of the proceedings, if the following guidelines are observed:

(a) Under no circumstances should there by any voice recording or photographing of any juror, or jurors, or any venireman.

(b) All television cameras should be in the rear of the courtroom, preferably behind a screen or some sort of partition.

(c) Under no circumstances should any cameras be permitted in front of the railing.

(d) All equipment should be installed at least ten minutes before the start of proceedings, and removed only during a recess.

(e) All electrical cords should be taped to the floors or to corners of walls in order to be as inobstrusive as possible.

(f) If at all possible, the available light in the courtroom should suffice. If the available light must be supplemented, the necessary equipment should be turned on before the start of proceedings, and remain on until a recess.

(g) It should be stipulated that there should be no moving about the courtroom on the part of media personnel.

(h) The existing public address system should be used if there is one in the courtroom. If not, the method of recording voice should be determined at a pre-trial meeting with the judge.

(i) Only noiseless cameras should be used while court is in session.

(j) The Committee recommends that before every trial there should be a pre-trial meeting of the media people with the trial judge to review guidelines, to determine camera position, and to deal with any specific

7. Assuming that recording for radio or photographing for television of courtroom proceedings is permissible, the Committee was divided as to whether or not the prior consent of any party or witness would have to be secured as a condition for the recording or photographing. Those who believe that consent should be required take the position that the individual party or witness has a right to safeguard his privacy and to protect himself from the pressures which may be generated by the recording or photographing. Furthermore, they hold that if prior consent is secured, grounds for a later allegation that a fair trial had been denied will be eliminated from a subsequent appeal. Those who believe that prior consent should not be required take the position that a trial is by definition a public event, and that therefore those who are involved have no right to be unidentified, just as they now have no right to remain unidentified so far as newspapers are concerned.

The Committee took separate votes on the issue of consent with respect to radio, television and still photography. Five members (Byers, Fellman, McCann, Pfiffner and Steffes) believe that consent should be required in the case of voice recording for radio broadcasting, while seven members (Bodden, Hopp, LeGrand, Schwandner, Shinners, Stafford and Steinmetz) believe that consent should not be required. With respect to television, six members (Byers, Fellman, McCann, Pfiffner, Steffes and Steinmetz) believe that consent should be required, while six members (Bodden, Hopp, LeGrand, Schwandner, Shinners and Stafford) do not believe that consent should be required. With respect to still photography, three members of the Committee would require consent (Byers, McCann and Pfiffner), whereas nine take the position that consent should not be required. (Bodden, Fellman, Hopp, LeGrand, Schwandner, Shinners, Stafford, Steffes, and Steinmetz).

8. In addition, the Committee believes that while pooling, particularly among television stations, is not generally to be desired, in unusual cases, with the permission of the judge, some sort of pooling arrangement may be

necessary in order to prevent overcrowding the courtroom with cameras. Each such case would have to be dealt with on its terms. From the point of view of the requirements of a fair trial there is no objection to pooling arrangements.

III

A majority of the Committee believes that with the safeguards spelled out above, it would be desirable to permit radio and television stations to record and broadcast actual courtroom proceedings. They believe that the electronics news media, holding a commanding position in the world of modern communications, are entitled to a full opportunity to report courtroom events in their own manner. They hold that since a trial is a public event to begin with, this merely expands the public in which the event occurs. They maintain that broadcasting or televising trials would tend to bring to the public a greater understanding of the court as an instrument of justice. They also believe that such broadcasting might possibly have the desirable effect of bringing the events of the trial to the attention of potential witnesses who might thereby be alerted to come forward and give testimony themselves. In addition, those who favor broadcasting, both by radio and television, believe that it would tend to correct the misconceptions about the nature of courtroom proceedings which many people have derived from the fictionalized and misleading presentations which appear in so many commercial radio and television programs. Thus they believe that broadcasting would strengthen public confidence in the courts as instruments of justice.

A minority of the Committee is opposed to the broadcasting of actual courtroom proceedings by radio or television largely on psychological grounds. The minority concedes that it is technically possible to record what goes on in the courtroom for radio and television without any physical disruption of the proceedings. The minority, however, does not believe that it is possible to erase the psychological impact of even the best-conducted forms of recording. It is apprehensive of the possible impact upon judges, upon the accused, upon witnesses, and upon the community in general. Perhaps

the major concern of the minority is with the possibility that radio and television may have the effect of reducing the willingness or ability of witnesses to come forward and tell what they know in a straightforward manner. They fear that if witnesses know that they are speaking to a large unseen audience, they may become either overly bold or overly timid, and that some witnesses might be unwilling to testify at all if they can possibly get out of it. Where judges are elected, as they are in Wisconsin, it is feared that television might, perhaps unconsciously, induce some of them to assume a posture for broadcasting purposes which would not be in the best interests of the administration of justice. It is also felt that television might have a harmful effect upon the accused, particularly if he does not have a good apperance, or if he does not conduct himself in a manner which comes through the television tube with maximum affectiveness. Finally, the minority believes that broadcasting from the courtroom will give the trial judge too many additional chores when his situation already imposes very heavy responsibilities upon him.

IV

In conclusion, the members of the Committee agree that it is possible, from a technical point of view, and following certain prescribed guidelines, to record or televise a trial without any serious physical obstruction of the proceedings. The Committee divides on the issue of the possible psychological impact of radio and television upon witnesses, parties, judges, and the public. Finally, the Committee, (with McCann and Pfiffner opposed) is prepared to recommend that still photography be permitted subject to the safeguards outlined above. It is therefore suggested that Rule 14 be amended by striking the phrase "or taking of pictures", and substituting in its place the following phrase: "but a judge may permit the taking of still pictures in the courtroom during judicial proceedings

when it will not interfere with the judicial process or fair trial under regulations pronounced by him, but never of any member of the jury".

V

On the central issue of whether radio and television broadcasting of court proceedings should be permitted, it is thought that the actual division of the Committee should be recorded, and that the division on the two forms of broadcasting should be indicated separately. The following eight members of the Committee are in favor of permitting the broadcasting of court proceedings by radio: Bodden, Byers, Hopp, LeGrand, Schwandner, Shinners, Stafford and Steinmetz. The following four members of the Committee do not favor radio broadcasting of judicial proceedings: Fellman, Pfiffner, McCann and Steffes. The following six members of the Committee are in favor of permitting the televising of judicial proceedings: Bodden, Hopp, LeGrand, Schwandner, Shinners and Stafford. The following six members of the Committee are opposed to the televising of judicial proceedings: Byers, Fellman, McCann, Pfiffner, Steffes and Steinmetz.

Respectfully submitted,

David Fellman, Chairman

Robert Bodden

James W. Byers

Duane W. Hopp

Roger W. LeGrand

Ray T. McCann

Robert F. Pfiffner

Harvey W. Schwandner

John J. Shinners

Willard S. Stafford

Herbert J. Steffes

Donald W. Steinmetz

COMMITTEE TO RECOMMEND RULES ON USE OF SOUND

AND CAMERA EQUIPMENT IN THE COURTROOM

Professor David Fellman
Political Science
217 North Hall
Madison, Wisconsin 53706

Robert Bodden
Radio Station WSWW
Platteville, Wisconsin 53818

Hon. James W. Byers
County Judge, Branch 2
Brown County Courthouse
Green Bay, Wisconsin

Duane W. Hopp, Chairman
Police-Fire-Court Comm. of
Wis. Press Photographers Ass'n
2330 Tanager Trail
Madison, Wisconsin 53711

Roger W. LeGrand, President
Wisconsin Broadcasters Association
c/o WITI-TV
5445 North 27th Street
Milwaukee, Wisconsin 53209

Ray T. McCann, Atty.
425 Caswell Building
152 W. Wisconsin Avenue
Milwaukee, Wisconsin 53203

Hon. Robert F. Pfiffner
Circuit Judge, 19th Jud. Cir.
Chippewa County Courthouse
Chippewa, Wisconsin 54729

Harvey W. Schwandner, Editor
Milwaukee Sentinel
333 West State Street
Milwaukee, Wisconsin 53201

John J. Shinners, Publisher
Hartford Times-Press
20 East Jackson Street
Hartford, Wisconsin 53027

Willard S. Stafford, Atty.
204 South Hamilton Street
Madison, Wisconsin 53703

Hon. Herbert J. Steffes
Circuit Judge, Branch 11
Milwaukee County Courthouse
Milwaukee, Wisconsin 53202

Hon. Donald W. Steinmetz
County Judge, Branch 8
Milwaukee County Courthouse
Milwaukee, Wisconsin 53202

APPENDIX G

The State of Wisconsin
STATE PUBLIC DEFENDER

State Public Defender
Richard Cates (608) 266-3440

340 West Washington Avenue
Main Floor
Madison, Wisconsin 53702
(608) 266-3440

Deputy State Public Defender
Post-Conviction Division
Robert J. Paul (608) 266-8374

Deputy State Public Defender
Trial Representation Division
Ronald L. Brandt (414) 224-4807

February 1, 1979

Professor David Fellman, Chairman
Committee to Monitor Cameras in the Courtroom
University of Wisconsin
Department of Political Science
North Hall
1050 Bascom Mall
Madison, Wisconsin 53706

Dear Professor Fellman:

The following is a summary of the position of the State Public Defender's Office Appellate Unit concerning the continued use of cameras in the courtrooms.

At the outset, several introductory comments are perhaps in order so that the basis for our position, in opposition to the continued use of cameras in the courtroom, is well understood.

First, our position is founded on our attorneys' limited specific experiences with a few recent important cases involving television and cameras in the courtroom and on some experience with newsprint and other media. The office was involved in a minor fashion in a case in Milwaukee which concerned the televising of a retrial. We are presently involved in an interlocutory appeal of a Sauk County case which concerns newspaper and possibly television coverage of pre-trial proceedings in a murder-rape case. Our trial unit in Eau Claire represents a client on two counts of second degree murder and one of arson. Pre-preliminary hearing motions to exclude media reference to a confession were heard in chambers and denied. Other motions are contemplated.

We feel these experiences and our experience in the criminal justice system, as criminal defense specialists, qualifies us to make some observations and comments concerning this issue. We hope the Committee and the Supreme Court will consider comments based not only on the observations of the persons who directly participated, over the last ten months, in the handful of trials which were televised or photographed, but also the observations based on the more general experience of concerned practitioners.

Second, we do not cite any studies in support of our conclusion that cameras can, and in some cases will, render a criminal trial unfair. We are not aware of any definitive or comprehensive studies having been conducted in this area. The lack of such studies perhaps supports our belief that, ordinarily, it is extremely difficult to measure the effects cameras have on trial participants. The persons actually influenced by the cameras may not even recognize the impact the cameras have had on them. For this reason, we are particularly skeptical of "studies" which merely ask the trial participants whether they felt they or anyone else had been affected or influenced by the presence of cameras in the courtroom.

Third, our opposition to cameras in the courtroom stems in part from an obligation to protect the interests of the clients whom we represent. We represent indigent persons who have been charged with, or convicted of, state crimes. All of our clients are indigent, a substantial number are minorities, and the offenses generally involve "street crimes" (crimes of violence, theft, burglary, robbery, drug-related offenses, etc.).

Our clients generally do not desire, or benefit from, publicity in <u>any</u> form. Obviously, any publicity concerning the commission of a crime embarrasses and degrades not only the person charged but his family as well. More importantly, such publicity reinforces negative community attitudes toward indigents and minorities. Our clients, because of the types of crimes they have allegedly committed, their indigency, and at times other characteristics, already generate little public sympathy. Publicizing their problems with the law is not to their benefit. Fourth, it has been our experience that some trial judges respond to the public attitude toward "street crimes" by imposing heavier sentences (and using more colorful and humuliating language while doing so) when the proceedings are being covered by the media. Finally, pre-trial publicity is unavoidably one-sided and anti-defendant, for the simple reason that pre-trial proceedings generally involve only the disclosure of the prosecution's case. Rarely, if ever, will a defendant testify, call witnesses, or otherwise divulge the evidence in support of his defense prior to trial.

Thus, we are concerned about publicity in any form, but we are <u>most</u> concerned about the use of cameras (especially television cameras) in the courtroom. We, of course, recognize that virtually everything which happens in the courtroom is a matter of public record, and that any citizen could generally obtain the same information broadcast by the media by simply appearing at the courtroom and observing the proceeding. Realistically, however, the probability that a criminal defendant will not receive a fair trial because of the public's opportunity to attend the proceedings is not significantly increased because so few persons take advantage of the opportunity.

Television, however, presents a special problem. There is something about the medium which makes it particularly effective in shaping public opinion, even when matters are reported objectively (e.g., coverage of the presidential debates, Vietnam War, Watergate). Perhaps because its audience is passive, it reaches a much larger audience than any other medium. (The Ronny Zamora trial in Florida, wherein the "television intoxication" defense was raised, was viewed by an estimated 100,000 persons.) Unlike other media, television allows for the instantaneous dissemination of information, after providing little opportunity for the editing of prejudicial material. The information is absorbed by the public at or very near the time decisions regarding the criminal defendant's future are being made.

Television also presents a special problem because the high cost of broadcasting court proceedings will result in only the sensational trials being televised. These cases are exactly the ones where, because of the publicity already generated

by other media, there is the greatest risk that a fair trial cannot be had. The incremental harm wrought by simply televising the trial might be enough to "tip the scale," and to render the trial unfair.

The combination of these factors gives television the greatest potential for denying the accused his constitutional right to a fair trial, and it is the denial of this right with which we are most concerned. We, therefore, do not object to the use of cameras in appellate courtrooms. Because our concern involves the fairness of trials, the minimal disruption which is occasionally caused by technical and logistical problems in photographing or televising courtroom proceedings do not concern us. We assume that the media can solve most of these problems, or that they will resolve themselves through technological advances. We take no position on the use of cameras in civil trials, except to note that due to constitutional considerations applicable only to criminal cases, the argument against the use of cameras in courtrooms is perhaps more compelling in criminal cases.

Fair trials are threatened by the presence of cameras in the courtrooms because some witnesses will be reluctant to testify, and some jurors will be reluctant to acquit the accused, once the identities of these witnesses and jurors becomes public knowledge. The observation that "the honest witness doesn't object" to the cameras is an easy, but inaccurate, over-simplification. Our experience demonstrates that the incentive to testify, especially given the high stakes inherent in criminal cases, involves more complex considerations than this maxim suggests. (A recent example is the Milwaukee Journal story about Betty Kilmer who testified in a homicide trial which was not televised. A right to privacy is also at stake here and it concerns persons other than the defendant. A copy of the article is attached.)

A variety of factors enter into a jury's decision making process. Juries do not always decide cases solely on the evidence adduced at trial. A juror may be subconsciously motivated to convict a defendant if he believes that, as a result of the cameras being in the courtroom, he will be ridiculed for having acquitted the defendant. Of course, what is important is not whether jurors or witnesses are actually placed in danger or are actually held in public disrespect, but whether the jurors or witnesses consciously or unconsciously perceive these as possible consequences of the media coverage. The real danger is that trial judges, using the legal means traditionally available to them, will be unable to detect, much less minimize, the often subtle influences for which cameras are thought to be responsible.

Television cameras might also create incidental procedural problems effecting the fairness of the accused's trial. Coverage of pre-trial hearings will not only result in the publication of the evidence implicating the defendant, it will in some cases, result in the publication of evidence which is inadmissible at trial. This issue is presently pending before the United States Supreme Court in Gannett Co. Inc. v. DePasquale argued November 7, 1978.

Similarly, in those cases in which the defendant is retried (because a new trial or mistrial is ordered), it will be difficult to insure the fairness of the second proceeding if the first was televised: many prospective jurors will already know the evidence against the accused, and will already have formed an opinion of the case.

Our experience is that the traditional methods employed to ameliorate the prejudice created by such situations have been generally ineffectual. Changes of venue accomplish little if publicity is wide-spread; and, cameras increase the media's opportunity to reach larger audiences and remote areas. Changes of venue also deny the defendant the important right to a trial in the community where the crime was committed. Voir dire during jury selection has also proven an ineffective tool to combat prejudice, because jurors are naturally reluctant to admit that they are biased, and because it is difficult to explore the degree and pervasiveness of the prejudice without actually reemphasizing to the jury what the prejudicial "event" was. Admonitions from the court to disregard any information already known about the case are difficult to follow, especially if the information is in the form of a confession or tangible evidence implicating the defendant.

Another problem created by cameras is that jury sequestration will be necessary anytime there is a delayed broadcast of a witness' testimony, delayed commentary concerning the trial, or there is coverage of proceedings heard outside the jury's presence. Sequestration is not only extremely costly, but is very inconvenient for the jurors. In trials that last more than several days, sequestration can be so inconvenient as to effect jury deliberations, by giving the jury an incentive to merely "get the case over with."

A third problem is created by televising or photographing only a portion of a trial or of a witness' testimony. Such a procedure potentially places undue emphasis on the proceedings which are covered, and could tend to convey to the jurors the impression that the proceedings not covered were less important.

We would expect that permitting cameras in the courtroom will, as indicated above, introduce a new variety of problems and that the number of mistrials will accordingly increase. Mistrials are costly to the state and inconvenient for the parties, and in some instances, could possibly have double jeopardy implications.

As our comments suggest, we believe the continued use of cameras in the courtroom would not only impair the defendant's interests, but would also significantly increase the costs (monetary and otherwise) of criminal justice administration. Trial and appellate courts would undoubtedly be faced with a variety of legal challenges concerning the use and effect of cameras in the courtroom. Trial judges presiding over televised trials will face additional administrative and supervisory responsibilities. The trial judge will be charged with the duties of (1) establishing, within the guidelines, the ground rules for media coverage; (2) monitoring the media activity during trial; (3) detecting and minimizing any prejudice resulting from the coverage; and (4) sanctioning improper media activity when appropriate. These duties must be performed in addition to the considerable duties already performed by trial judges.

Guidelines can be implemented concerning the use of cameras, but each case will present a unique fact situation, unique procedural problems, and a unique potential for unfairness. It is unrealistic to expect any guidelines to be "self-executing." The media's interest, in fact it's sole reason for existence, is to publicize events considered to be newsworthy. Such an interest directly conflicts with the interests of an accused in a criminal trial. The materials before the Committee indicate that the guidelines promulgated by the Supreme Court, and specific instructions by trial judges, have on occasion been intentionally ignored by media personnel. The materials also demonstrate that some media representatives are generally insensitive to the legal issues presented by camera coverage and not surprisingly, are unsympathetic to the claim that camera coverage can adversely effect trial participants or the rights of an accused.

None of our comments are intended as criticism of the media; rather, we simply recognize that the media representatives have different interests and different perspectives on this issue. We are confident that cameras will rarely be intentionally manipulated so as to achieve a particular outcome at trial. Our major concern is that camera coverage itself will create the risk that an accused will be unable to obtain a fair trial. We obviously cannot "prove" this will happen, but believe this risk is sufficiently real so as to require, at the minimum, further study of the effects cameras might have on trial participants. From our perspective, if one criminal defendant is denied a fair trial because cameras were present in the courtroom, we have paid too high a price for our "right to know."

We thank the Committee for this opportunity to express our position on this matter. If you have any questions concerning our position, please feel free to contact me.

Respectfully submitted,

Robert J. Paul

ROBERT J. PAUL
Deputy State Public Defender

RJP:SDP:jkb

Attachment

Open Wound: Testimony Ends, Threats Linger

By Dorrea Wetherall
of The Journal Staff

Betty Kilmer is bitter and frightened.

She claims that she and her family are being threatened because she testified as a witness in a murder trial years ago.

"We didn't do nothing but try to help," Mrs. Kilmer said. Now she fears for the lives of her husband, four children and herself.

She said relatives and friends of the two men convicted of second-degree murder for the death June 2, 1975, of Steven S. Carroll, 24, have frequently harassed her family.

Carroll was beaten to death by at least a dozen persons in front of his apartment at N. 10th and W. State Sts.

Jose Sanchez, then 22, and Juan A. Gonzalez, then 19, were found guilty by a jury in February, 1977.

Sanchez was sentenced to 18 years in prison and is at the State Prison in Waupun. Gonzalez was given an open year sentence and is at the Kettle Moraine Correctional Facility. Two other men were charged but were found not guilty.

Carroll was killed after he had first shot at the group of men with a rifle. Police said Carroll was angry because he thought he had been cheated out of a dollar in a dice game with the group.

Mrs. Kilmer, her husband and her two teenaged sons witnessed the killing but only Mrs. Kilmer testified in the murder trial.

Authorities agree that theirs is a potentially violent situation that they cannot much about until someth happens. Mrs. Kilmer she did not want to wait f family member to get hurt.

And she's not going to any more help from the co tim's Witness Protection U The 31½ year old experim tal program that gives support to witnesses who te

Turn to Family, page 8, col.

Family

Testimony Leads to Threats

From Page 1

in criminal cases expires today.

Milwaukee County Sheriff's Lt. Arnold Nannetti, head of the program, predicted last week that a witness would get injured.

"There's going to be a problem eventually, but what am I going to do?" Nannetti asked. The County Board decided not to finance the program for 1979.

Nannetti said that, because the Kilmers moved back to the same general area where the murder occurred, they could expect harassment.

A Milwaukee police official said last week that the department was aware of the situation but could not offer 24 hour protection for the family.

Milwaukee Dist. Attv. E. Michael McCann said that, although he supports the work of the special unit, he sympathized with the County Board's struggle to control spending.

"Very few witnesses are subjected to threats," McCann said, "and the county is under intense pressure to keep the tax level down."

In addition to the morning telephone calls, the Kilmer family has complained to police of the following incidents:

Mrs. Kilmer's 16 year old son, Kirk, was shot at but not injured early Thursday while at a friend's house nearby. Milwaukee police detectives are investigating.

Two young men armed with a machete and a gun stood on the porch of the Kilmers' West Side home Christmas Day. The Kilmer house was filled with friends and relatives. Threats were exchanged, but no violence occurred.

Mrs. Kilmer's car broke down Thanksgiving Day two blocks from where the murder took place, and she received threats of physical harm.

"We're afraid to walk outside because someone is going to blow our heads off," said Cine Kilmer, her husband.

As she looked around at the family, Mrs. Kilmer said, "If one of them got shot, I'd never forgive myself for what I've done."

The family also fears for its safety in the neighborhood.

Within weeks of Carroll's murder, the Kilmers were forced to move to Oklahoma, Mrs. Kilmer said. They returned to Milwaukee in April, 1977, but after this was over. Since then they have moved four times, hiding out away from their tormentors, they said.

"We've lost everything," Mrs. Kilmer said.

Gene and Betty Kilmer and sons Kirk Dintzler, 15, and Scott Dintzler, 7, said they now live beating, but Mrs. Kilmer said she tried to stop the men.

"They came to blows and that they were going to kill him," Mrs. Kilmer said. But the men only warned her to stay away, she said. That's when she decided that she would testify, she said.

Mrs. Kilmer has feared retaliation for more than two years. But not Kirk. He said he carried a .38 caliber gun with him and would use it if he had to.

"I'm going to shoot right back at them," Kirk said. "We've been pushed around for two years."

When asked what she would do if he could relive the situation, Mrs. Kilmer replied:

"I would help, but I'd walk down before the cops came. And that night that I didn't see anything."

—Journal Photo

Gene and Betty Kilmer and sons, Kirk and Scott Dintzler (right).

APPENDIX H

RECOMMENDED REVISED RULES

1. Authority of Trial Judge

(a) These rules of conduct do not limit or restrict the power, authority, or responsibility otherwise vested in the trial judge to control the conduct of proceedings before the judge. The authority of the trial judge over the inclusion or exclusion of the press or the public at particular proceedings or during the testimony of particular witnesses is applicable to any person engaging in any activity authorized by these rules.

(b) The term "trial judge" includes any judicial officer who conducts a public proceeding.

2. Media Coordinator

(a) The Wisconsin Freedom of Information Council shall designate for each administrative district a coordinator who shall work with the chief judge of the administrative district and the trial judge in a court proceeding in implementing these rules. Geographically large administrative districts shall be subdivided by agreement between the Council and the chief judge, with a coordinator designated for each subdistrict.

(b) Where possible, the trial judge shall be given at least five days' notice of the intention of the media to bring cameras or recording equipment into the courtroom. In the discretion of the trial judge, this notice rule may be waived where cause for such waiver is demonstrated.

3. Equipment and Personnel

(a) Three television cameras (film, videotape, live), each operated by one person, are authorized in any court proceeding. Priority consideration will be extended to one of the three cameras to televise an entire proceeding from beginning to end.

(b) Three still photographers, each not using more than two cameras, are authorized to take photographs for the print media in any court proceeding.

(c) The trial judge or the chief judge may authorize the use of additional cameras at the request of the media coordinator in extraordinary court proceedings or may limit the number of cameras where physical circumstances require limitation.

(d) One audio system for radio broadcast purposes is authorized in any court proceeding. Audio pickup for all media purposes must be made through any existing audio system in the court facility, when practical. If no suitable audio system exists in the court facility, microphones and related wiring must be unobtrusive.

(e) The media coordinator shall be responsible for receiving requests to engage in the activities authorized by these rules in a particular court proceeding and shall make the necessary allocations of authorizations among those filing the requests. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude all audio or visual equipment from the proceeding.

4. Sound and Light Criteria

Only audio or visual equipment which does not produce distracting light or sound may be used to cover a court proceeding. Artificial lighting devices must not be used in connection with any audio or visual equipment. Only equipment approved by the trial judge in advance of the court proceeding may be used during the proceeding.

5. Location of Equipment and Personnel

(a) The trial judge shall approve the location in the courtroom of audio-visual equipment and operators.

(b) Camera operators shall occupy only the area authorized by the trial judge and shall not move about the courtroom for picture taking purposes during the court proceeding. Equipment authorized by these rules may not be moved during the court proceeding.

6. Courtroom Light Sources

Modifications in the lighting of a court facility may be made only with the approval of the trial judge. Approval of other authorities may also be required.

7. Conferences

Audio pickup, broadcast, or recording of a conference in a court facility between an attorney and client, co-counsel, or attorneys and the trial judge held at the bench is not permitted.

8. Recesses, Periods before and after Court

Audio or visual equipment authorized by these rules may be operated during recess in court proceedings and before and after court, subject to reasonable restrictions imposed by the trial judge to maintain proper decorum and security and to avoid any photography or broadcasting which would impair the right to a fair trial.

9. Use of Evidence

Any film, videotape, photography, or audio reproduction made in a court proceeding as a result of these rules is inadmissible as evidence in any appeal or retrial of the same action.

10. Resolution of Disputes

(a) A dispute as to the application of these rules shall be referred by the trial judge, after making a record, to the chief judge of the administrative district for final resolution. An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any person or organization seeking to exercise a privilege conferred by these rules any order or ruling of a trial judge or chief judge under these rules.

(b) At the conclusion of a proceeding, the media shall have standing to litigate in the appellate court the validity of decisions made under these rules.

11. Prohibition of Photographing at Request of Participant

(a) A trial judge may for cause prohibit the photographing of a participant with a film, videotape or still camera on the judge's own motion or on the request of a participant in a court proceeding. In cases involving the victims of crimes, including sex crimes, police informants, undercover agents, relocated witnesses and juveniles, and in confession hearings, divorce proceedings and cases involving trade secrets, a presumption of validity attends the requests; the trial judge shall exercise a broad discretion in deciding whether there is cause for prohibition. This list of requests which enjoy the presumption is not inclusive; the judge may in his or her discretion find cause in comparable situations.

(b) Individual jurors shall not be photographed, except in extraordinary instances in which a juror or jurors consent. In courtrooms where photography is impossible without including the jury as part of the unavoidable background, such is

permitted, but close-ups which clearly identify individual jurors are prohibited. Trial judges shall enforce this rule for the purpose of providing maximum protection for jury anonymity.

12. Inapplicability to Individuals

The privileges granted by these rules may be exercised only by persons or organizations which are part of the news media.

Observer's Report

State v. Patri

The arson trial of Jennifer Patri, 33, of Waupaca, was moved to La Crosse by order of Wood County Circuit Judge Fredrick Fink because of publicity surrounding her earlier trial for murder in Waupaca County.

Mrs. Patri was convicted in December 1977 of manslaughter in the death of her husband, Robert, at their home southeast of Waupaca. She was accused of killing her husband and then setting fire to their house to conceal the killing.

The murder trial and the subsequent arson trial were widely publicized as Mrs. Patri was pictured by her attorney as an example of a battered wife who finally retaliated after years of abuse.

The arson trial, held in La Crosse County Circuit Court Branch 1, started December 4, 1978, with the jury selection. After 2½ days of questioning, 12 jurors and an alternate were selected, and testimony began December 6, 1978. The trial lasted until December 11. Mrs. Patri was found guilty of arson, but the jury of nine women and three men also found her mentally ill and not criminally responsible at the time she set fire to the Patri home. The jury was sequestered.

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The use of cameras and microphones in the courtroom followed the guidelines established by the Wisconsin Supreme

Court. Arrangements were made by Media Coordinator Jack Marlowe, of WLSU-FM, La Crosse, working with Judge Fink.

RADIO--One audio system for broadcast purposes was used by all local radio stations. La Crosse has three commercial AM-FM combinations and an FM station operated by the University of Wisconsin-La Crosse. The audio system was installed cooperatively by the local stations earlier in the year when the test on cameras and microphones in the courtroom began.

The local stations did not use the audio system for live broadcasting, but made extensive use of it to gather material for newscasts.

In addition, the audio system was used to provide sound to one on-sound TV camera and one video tape camera.

The audio system was unobtrusive, located immediately behind the bar. The system, for the most part, would not have been noticed by jurors, witnesses, the judge or counsel. The only part of the sound apparatus that was visible was the microphones, and the cords. The cords might have been the most noticeable because heavy tape was used to secure the cords to the floor.Five microphones were used: one by the jury box, one for theprosecuting attorney, one for the defense attorney, one for the judge, and one for witnesses.

TELEVISION--There were three TV cameras in the courtroom, the maximum authorized under the guidelines.

WXOW-TV, Channel 19, of La Crosse,had one camera, and was provided sound by the radio audio system. WEAU-TV, Channel 13, of Eau Claire, had a silent camera. Western Wisconsin

Technical Institute, of La Crosse, operated a video tape camera. Sound was provided by the audio system mentioned above. Western Wisconsin Technical Institute (WWTI) offers some technically oriented television courses and does some limited programming over the local cable system operated by Teleprompter. WWTI did not use the video tape camera to do any live telecasting of the trial.(And Channels 13 and 19 did not have live telecasts.)

WWTI did record the entire trial, and the tape is available for review.

WWTI also provided video for three commercial stations. It provided two tapes of courtroom scenes for WFRV-TV, of Green Bay. The tapes were sent by bus to Green Bay. It also allowed WLUK-TV, of Green Bay, to use its camera to make some tapes. WLUK had a reporter in La Crosse for the trial, and had a cameraman in La Crosse at the early stages of the trial.

WKBT-TV, of La Crosse, Channel 8, obtained its video material through WWTI. A line was run from the video tape camera in the courtroom to a small wash closet next to the men's room outside the courtroom. The closet was on the same floor as the courtroom, but across the hall. It would not be visible from the courtroom. Channel 8 recorded the trial in the closet, and used its tapes in parts of newscasts.

Channel 8's recording operation was visible to those in the hallway. But Channel 8 was instructed to turn down the volume when jurors or witnesses used the adjoining men's

room. The Channel 8 reporter was kept informed by bailiffs.

STILL CAMERAS--There were never more than two still cameras in the courtroom (as specified in the guidelines), but photo coverage was not limited to two newspapers. The La Crosse Tribune, Waupaca County Post, Minneapolis Tribune, Milwaukee Sentinel and Coulee Gazette (La Crosse community weekly) were represented at the trial. Photo coverage in newspapers was light, apparently. The La Crosse Tribune used two pictures during the trial. The Milwaukee Sentinel used one--provided by the Associated Press.

***

Overall, the media equipment did not appear to be obtrusive; at least not anymore than it would elsewhere, such as in City Council chambers. The microphones for the audio system could have been taken for microphones for a court sound system; still cameras did not appear too bothersome. The long cords necessary in the audio system were noticeable, but did not appear too unsightly. They were taped down and did not appear unsafe. Perhaps the most noticeable were the TV cameras. All three were on the left side of the audience part of the courtroom. The video tape camera was in the extreme left aisle. The other two were set up among the front benches, primarily where the press was seated. The judge and witnesses looked directly at the cameras. The defendant and counsel (if seated) had their backs to the cameras. The jury normally

would not look directly at the cameras. However, the cameras were easily visible, especially when jurors were looking at counsel, rather than the witnesses. My observations indicated that the jurors did not pay much attention to the cameras; at least not anymore than they looked at other things in the courtroom (such as spectators walking in during testimony). Two of the cameras were quiet, but Channel 13 had an older model that was somewhat noisy. The jurors, perhaps, could not hear it, but spectators could--and the courtroom is relatively small.

The media representatives appeared to work under the guidelines once the trial was under way. There was only one major problem, and that came during voir dire. It was soon settled, and I am not aware of any others.

Prospective jurors were questioned in a room behind the courtroom and near the judge's chambers. The room was not visible from the courtroom. Alan Rappoport, reporter-cameraman for WEAU-TV, Channel 13, wanted to get pictures of prospective jurors during questioning. He said he had gone beyond the bar to get pictures of veniremen seated in the jury box while others were being questioned in the room. He said that he thought that pictures could be taken because the court was in recess--with the judge and counsel away. Others, he said, had taken pictures when the court was not in session. Judge Fink (see his answer to Question 11) also cited the cameraman

as taking pictures at the doorway of the questioning room. Judge Fink did not want the room being panned. Judge Fink confiscated the film taken of the prospective jurors.

Rappoport suggested that in the future it be made more clear when court is in session, and when it is not, and what "the limitations are."

Following the incident, defense counsel made a motion to ban cameras from the courtroom, but Judge Fink denied it.

Joseph Zobin,
Court Observer
February 24, 1979

Judge Frederick Fink of Wood County (Wisconsin Rapids)

QUESTIONS TO BE ADDRESSED TO THE JUDGE

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record the name of the judge and how long he has served as a judge; also note which of the three media were used in the trial: (a) television cameras; (b) radio equipment; (c) still cameras)

TV, radio and still cameras were present

1. What, if any, influence do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on you during the trial?

Apprehension. I've got a much-publicized trial; tried to get a jury in the other place (Waupaca County) and there was tremendous pressure. And I had never worked with cameras in the courtroom.

2. Did the presence of (a) television cameras, (b) radio equipment, and (c) still cameras seriously increase your supervisory responsibilities?

Yes. It does. No question. You've got to keep an eye on them to assure they are following the guidelines, in addition to other things you have to supervise.

3. If your response to question 2 was in the affirmative, did those responsibilities interfere with your principal duties as a presiding judge?

Not substantially.

4. Did the presence in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras produce more letters, telephone calls, et cetera, then you usually receive?

I can't answer that.

5. What, if any, impact do you think the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras had on the witnesses?

I think there is always some ham in every human being and a tendency to play up to the media is there. And I'm concerned. I didn't see much of this [in this trial]. I saw some in the aborted trial in Waupaca.

NOTE: Judge Fink wanted to answer this as an all-inclusive statement that applies to all parties--counsel, witnesses, and others, and not just to witnesses.

6. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the behavior of counsel?

Very definitely, yes. To some counsel, it doesn't make a difference. To some, in varying degrees, it makes a tremendous amount of difference.

7. What, if any, problems occurred because of the use of (a) television cameras, (b) radio equipment, and (c) still cameras in your courtroom?

I didn't really have a problem; I had the problem contemplated. I confiscated some film. This is in the area of picking a jury. You may have to reach out to another panel. This panel is out there and watching TV. It becomes harder to pick a jury. In the preliminary phase, it may be necessary to prohibit TV cameras and still cameras.

8. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

I suppose I can answer that hypothetically. If a particular counsel wants to glean publicity from a trial that has publicity merit, then he can milk it for all it's worth. I'm not saying it was done. It can be done. I don't know how you can be certain it's happening.

9. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

I don't think I can answer that. The jury brought back a verdict. I can't say that it had an effect.

10. What, if any, effect did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

There, again, I can't answer the question. I would hope it didn't have any effect.

11. Describe any requests you received for the prohibition of (a) television cameras, (b) radio equipment, and (c) still cameras, the action you took based on those requests, and the reason(s) for your action.

Defense counsel--at the opening of the trial--asked that all cameras and radio be prohibited. I asked him his reasons and he said his client felt it would be detrimental. He gave no reasons, so we followed the guidelines of the Supreme Court. When we were voir direing individuals, an attempt was made by TV to photo part of this. I had seated the juror so her back was to the door. He (the cameraman) wanted to pan [the room]. I refused. I said they could take pictures from the doorway. I wanted as little of the jurors' faces on TV as possible. I may have been too lenient. Maybe I should have prohibited [all cameras at this time].

NOTE: Questioning of panel members took place in a room behind the main courtroom.

12. Overall, what is your general evaluation of the use of (a) television cameras, (b) radio equipment, and (c) still cameras, in the courtroom?

On still cameras: With advances [in technology], no objections, provided the cameraman is not obnoxious.

On radio: I can't see any objections as a news medium. If it could be used for challenges in the court--there are too many ways it can be doctored--I can see objections. I saw in Waupaca and here that older courtooms do not lend themselves [to having all this equipment]. There are cables all over and you are stumbling over it. You will have problems from an operational standpoint. You don't have room.

NOTE: The judge also mentioned the safety factor.

Television: Here, I feel a danger to a fair trial in the initial and preliminary hearings--in the initial stages of a trial, especially when it has been highly publicized (and you don't have TV unless it has been highly publicized). It can make it very difficult to get a jury [that is impartial]. The trial judge should be given a great deal of discretion [at this stage]; it is an area frought with danger. Once you've got a jury picked, I can't seen anything wrong with television in the courtroom.

Defense Attorney: Alan Eisenberg, Milwaukee

QUESTIONS TO BE ADDRESSED TO COUNSEL

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Be sure to identify lawyers as to whether they were appearing for defendants or as prosecutors)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you from the tasks at hand during the trial?

They didn't distract me at all; but three jurors, in voir dire, said they felt the cameras were a distraction... Because one newsman violated the rules.

2. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the strategy of litigation you intended to use?

I felt that the judge was less publicly abusive because of it. Therefore it was a help.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the manner in which you examined or cross-examined witnesses?

Zero

4. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on your contacts or relationship with the judge?

See above. He was less abusive than in the first [patri] trial.

Did (a) television cameras, (b) radio equipment, and (c) still cameras result in producing more telephone calls, letters, etc., than you usually receive?

No.

6. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the jury?

Before the trial three [Jurors] said it would be a distraction. You would have to ask them now. I don't know.

7. What effect, if any, did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

Zero

8. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

Zero. Maybe a help, because it kept the judge from getting publicly abusive. Therefore, it was helpful.

9. Overall, what effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I felt it was helpful. It inhibited the judge's abuse. This is speculation on my part. I don't really know if that was an inhibiting factor.

10. If you had a choice, would you have preferred to try the case with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

With. It keeps everybody honest.

11. What overall advantages, if any, do you ascribe to the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

It keeps people from getting abusive. Both the prosecutor and the judge would have been caught in the act by the camera.

Prosecuting Attorney: Philip Kirk, assistant district attorney, Waupaca County

QUESTIONS TO BE ADDRESSED TO COUNSEL

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Be sure to identify lawyers as to whether they were appearing for defendants or as prosecutors.)

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you from the tasks at hand during the trial?

It didn't distract me at all.

2. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the strategy of litigation you intended to use?

Absolutely none at all.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras affect the manner in which you examined or cross-examined witnesses?

None at all.

4. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on your contacts or relationship with the judge?

I don't think it affected it at all; there was not that much contact.

5. Did (a) television cameras, (b) radio equipment, and (c) still cameras result in producing more telephone calls, letters, etc., than you usually receive?

Well, I would say during the course of the trial, I had quite a number of calls, but I don't know if they resulted [from the equipment in the courtroom]. It was the substantive nature of the trial [and the news] disseminated by the media. There was a built-in interest factor.

6. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the jury?

In questioning [to get a jury] a few said they felt it was a distraction, but not a single one indicated it...would interfere with being able to make a fair decision. I would think that once the trial began, they would be more aware of the equipment than I was because of the positioning. When they looked at counsels' table, they saw the equipment; I didn't.

7. What effect, if any, did the use of (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of the trial?

None, because there was never an instance where there [was a delay] because the equipment wouldn't work. The only dilatory situations were indigenous to this trial.

8. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the outcome of the trial?

I would like to say none, but I might hedge to a degree. Since the jurors were isolated, they were not exposed to [media reports] I think the fact that they were there indicated the significance or importance of the trial, and might have been a signal [to the jurors] to be more scrutinizing and careful to come up with a decision.

9. Overall, what effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

To me, the trial was fair. I think that the evidence both sides wanted to present was presented.

10. If you had a choice, would you have preferred to try the case with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

No difference to me. My presentation was based on what I wanted to elicit from the witnesses. There was no concern. I made no changes. It was something that was there, and that was it.

11. What overall advantages, if any, do you ascribe to the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I don't think there were any advantages to have TV cameras in the courtoom to attorneys, judges or jury. I think the advantage in having the equipment was to disseminate as accurate an account as possible of what happens in a courtroom to the public. People have such little appreciation of what happens in /criminal matters/; there may be misconceptions. This is very good for that. It can be very educational. Certain witnesses and defendants would be against it...but it can be very educational.

Harold Bauer, Waupaca County sheriff's deputy

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

Investigator, called by the state

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

   I imagine somewhat.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

   No effect. They put you more ill at ease than you are /normally/.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

   None. I don't live in the area /where the trial was/.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

   Without.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

   I couldn't answer that. You would have to ask the jury.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

   I don't know. In many cases, it would be so well publicized that if there was a re-trial, it would be hard to get a jury that was not informed.

Lawrence Schmies, Waupaca County Sheriff

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

investigator, called by the state

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

You are a little conscious of the cameras. It is a little bit like when someone says, "I want to take a picture," and you straighten your tie. It takes away from the natural testimony. You are more conscious and you try to avoid slang (like ain't). You try to sound reasonable and half-way decent to the public.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you? I don't know if it would. I tried to keep it short and precise...and /not/ open new fields. I don't think it had an effect on the length. Most /law enforcement agents/ are trained to give straight, simple and direct answers.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

I don't think any from the cameras. I did receive some letters from California and Colorado from people who read stories in newspapers. They had the same name and wanted to know if our forefathers came over on the same boat.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom? It makes no difference. In this case, we were not being dramatic. The defense attorney was; that's his style. Most law enforcement /agents/ don't try to get dramatic; just give direct, simple answers.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

Well, a picture's worth a thousand words. He's (defense attorney) got a product he's selling to jury. It does carry an effect--not on the jury, but on the public. But, I don't know. I don't see any harm to it.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I think a lot would depend. Every case is not alike. Some will incite the public; some inflame. It depends on the case. If it disturbs the public, no. If there is human interest, yes..... It didn't bother me. We try to be simple and direct. It makes you conscious; cuts out a lot of foolishness.

The Rev. Richard Mundt, pastor of Emmaus Evangelical Lutheran Church in Weyauwega

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

reference, called by defense

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

   Mildly so. I was aware of them, and mildly bothered, but that's it.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

   Made no difference at all.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

   Nothing.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

   I would say without.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

   I have no idea. I didn't really consider that. I just don't know.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

   It makes people more uneasy. I'm not sure whether it should be allowed; that's up to the court. It makes people nervous.

Dr. John Mulvaney, psychiatrist from Marshfield

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

expert witness, court-appointed psychiatrist

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

Oh, I suppose to some degree. I felt it was not just me. It had an effect on the entire proceeding. I had a negative feeling. The proceeding is more important than the publicity. Newspaper and TV people had a detrimental effect; and not just in the courtoom. I was not in favor of it. I didn't think people should be on exhibit. It's enough of a circus without making it public.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you? I don't think it affected it too much that way. My answers were determined by the questions. They /the questions/ were not adequate to express my viewpoint.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

It didn't. I wasn't on TV. My testimony was later and they were more interested in the decision than the people. I got some comments before the trial.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom? Without. I feel my /appearance/ was an obligation to the psychiatric community and I was not interested in demonstrating for publicity. TV makes it a public exhibition.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

You would have to ask the jury. I don't know what affect it had on the questions that were asked me; ask the prosecutor and the defense attorney.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

It doesn't have to be there. The court doesn't have to justify to the public that it is doing right; it doesn't have to apologize to the public. I don't think putting witnesses with instability will make them more stable. It may be a disservice. When a witness has a problem with stability, it won't make him more comfortable.

Mr. Jean Clark, assistant fire chief of Weyauwega

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

invetigator, called by state

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

   Just in an unreasonable delay while they were argueing about having it [equipment in the courtroom].

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

   None

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

   None

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

   I don't think it makes much difference.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

   I don't know.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

   I don't think it should be allowed. Too much publicity is put one these trials.

Herbert Loehrke of rural Weyauwega

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)
Had sold house to Patris' and was owed money; called by state

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

Really none.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

Mine was just a testimony of fact; nothing would distract me much.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

None

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

Preferred that they were gone---out.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I couldn't really say. People in that area got the wrong impression of the lady.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I really don't believe they belong there.

Mr. Leslie Meyer, state fire marshal from Weyauwega

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

investigator, called by the state

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

I didn't notice them while testifying.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

None at all.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

Just this one.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

It doesn't matter to me, either way.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I would be hard pressed to give an answer. I can't conceive how it would affect the fairness of a trial, as long as they were kept unobtrusive and don't creat problems for the jury.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

I wouldn't think I would have an evaluation. I haven't really studied it.

Dr. Kathryn C. Bemmann of Waukesha, psychiatrist

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

Expert witness, called by defense

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

   I did not feel uncomfortable. I was not aware they were there. I was doing my thing.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

   On a conscientious level, I was not playing to them. If it was on an unconscientious level, I was not aware. I don't think it had /any effect/.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

   I suppose some people saw me and commented. But because it was so far away /from where I practice/, I would say it was not a very great influence. On a scale of zero to 10, about a 2; nothing hostile.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom?

   I don't think I have a choice.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

   I feel it did not affect the fairness of the trial.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

   I think that overall a lot depends on how obtrusive the cameras /are/....Overall, for me, it was a neutral experience; neither positive nor negative.

Dr. Anna Campbell of Elm Grove, psychologist

QUESTIONS ADDRESSED TO WITNESSES

If additional space is needed for your answer, please attach sheets and number each answer.

(Note to observer: indicate the nature of the witness, e.g. whether the complaing witness, the defendant, an expert witness, a casual witness, etc.)

expert witness, called by defense

1. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras distract you in giving your testimony?

   I'd say not at all.

2. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the length of your answers to questions put to you?

   I'd say no effect; none.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras result in your receiving telephone calls, letters, etc?

   I received none, so it must not have had any effect.

4. If you had a choice, would you have preferred to testify with or without (a) television cameras, (b) radio equipment, and (c) still cameras in the courtroom? From the perspective that it is valuable for the public to have awareness of what is going on in the courtroom, I would choose to have TV equipment there; not because of the affect, personally, but because it's valuable for the public.

5. What effect, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

   I think it had no effect at all. The jury was sequestered and couldn't see it.

6. Over-all what is your general evaluation of the use in the courtroom of (a) television cameras, (b) radio equipment, and (c) still cameras?

   I think if it was done as in La Crosse--with the cameras stationary and unobtrusive at the rear of the court--it's fine. It could be done obtrusively, but it was not.

Mrs. Jacqueline Bartlett

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

Initially, I was quite aware, and bothered. But after the third day, I was not even aware of it.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

None

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I don't think that much, especially the professional people.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I would say probably none as far as the state /attorney/. It seemed to me that Jennifer's attorney kind of was on stage; he was using theatrics. Maybe that's just his delivery. He seemed dramatic...for the benefit of TV.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

None

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't think it had anything to do with the fairness.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

I guess I would have to say I would rather it had been without. It seems cameras have a tendency to sensationalize things. /The media/ could have gotten material for a factual report without /the cameras/ in the courtroom.

Mrs. Elaine Betz

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

It didn't matter that much. We knew they would be there, and that was it. I didn't think about it.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

It didn't have any on our deliberation.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

Nothing, as far as letters or phone calls. A friend said she'd seen me on TV, after I got home.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I didn't even think about it then. I was so intent on what they were saying that I didn't think about it.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I don't think ithad much to do. Mr. Eisenberg was always flamboyant. But not knowing him, maybe he's always flamboyant. I don't think they even thought about it.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think they bothered him at all.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I doubt it had anything to do with the way [the case] was decided. It made no difference at all.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

It would make no difference. I was so intent on what was going on that I didn't give it a thought at all.

Mrs. Marian Boyle

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

We knew they were there; we could see them moving up and down. It was sort of distracting. The newspaper people were moving, too; they were no worse than the newspaper people.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None at all

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

Haven't had any

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I can't say. Most professional people seemed to be at ease. Some were nervous. It could just be being on the witness stand; can't say.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I don't think it affected the prosecutor any. But Jenifer's lawyer, I thought a lot of what he did was affected. Maybe he would have been that way anyway. He was very effected, but maybe he was doing ti just for the jury. This is the only trial I have seen him.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think any.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't think it had any effect at all.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

I think without.
(Her overall observation):
I think they [radio and TV equipment] somewhat distracted [jurors] but not to the extent that would have affected our coutcome.

Mrs. Leona Choate

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

Didn't bother me. Knew they were there. Didn't interfere with the proceedings; they were in the rear.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

Didn't make any difference.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

Not any.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

Most of the witnesses were...professionals and used to it. I don't think it had too much effect.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

Well, it was kind of publicized. It may have had a little effect /to/ emphasize their point.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think it bothered him too much. At one time, before the trial, someone came forward and he said that was not permissable. He was concerned that they abide by the rules.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't think it had any effect.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

This my first time on a jury. I was so interested /that I/ kepy my eyes forward. It didn't really bother me; I wasn't concerned.

Mr. Glenmore Eggum

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

I realized they were there.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None, whatsoever.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

None.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I don't think it bothered them at all.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

It might have affected the defense a little; the other, it didn't make any difference.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

None, whatsoever.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't believe it bothered the trial at all.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

Immaterial to me.

Mrs. Eva Farris

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

I knew they were there.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None, as far as I was concerned.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

I have had none.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I think it did have some. I know at times when some went up, you could tell they noticed the cameras. With gestures and facial expressions, yes.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I think at times they became very upset that the cameras and broadcasters were there. I am thinking of two instances in particular.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

They didn't seem to bother him when they were within the assigned areas. When they were not within, he became very upset.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

No effect. I knew nothing of anything until everything was brought out. I was unaware of anything about it. No effect on me.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

Made no difference to me.

Mrs. Jacqueline Holmes

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

I knew it was there, but it didn't bother me.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None. We did not see TV, newspaper or radio coverage.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

I got one call from a reporter the night I got home. A lot didn't know I was on it (the jury).

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I don't think it had any. Once called upon, they couldn't talk /about the case/ until dismissed.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I think so; yes. At least on one part; he (the defense attorney) was very dramatic.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

He wasn't pleased with them. I don't think he wanted them in there. He was rather upset with them.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

We didn't hear; we couldn't see...so what we saw /ourselves/ that was it.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

I don't think it would make any difference. I really don't. You would have news media anyway, and pictures in the newspaper, but really no difference. I think if people could see this on TV, they could tell better /what happens in court/ than from just a newspaper.

Mr. Frank Kitson

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

You knew they were present all the time.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

Nothing that I knew of. One reporter called after the trial, but that was not related.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I would say, yes; they played to the cameras.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

Very much. Dramatized a lot of places where it was not necessary; were on an ego trip.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think it had any.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't think it affected the trial or jury at all.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

I'd have been better off without /it/; it wouldn't have been dragged out; a lot was unnecessary; they were palying to the cameras. Cameras, per se, didn t bother me, or the others. I can see both sides. But it lengthened the trial.

Mrs. Helen Nelson

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

It really didn't bother me.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

I don't think any, whatsoever.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

None.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I don't really know. None that I noticed.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I don't think it ordinarily would have affected her lawyer. He was a bit more flamboyant than most lawyers.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't believe any, that I noticed.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I don't believe any.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

I had never been on a jury before. Didn't bother me; I shut it out of my mind. It didn't bother me, but I can see where it could bother some.

Mrs. Beverly Pralle

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

When the trial was going on, I was oblivious to them. When we came back in /to the jury box/ you'd say, "Oh, the cameras are there," but I got too absorbed to notice them.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None at all.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

I didn't have experience like that at all.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I don't know. I don't think it bothered anyone. It may have bothered some on the jury, but after the first day, you got used to it.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I just don't think either one performed for the cameras. They were trying to impress the jury rather than the cameras. Mr. Eisenberg was very colorful. I don't know him; that's probaly his way; it was not for the cameras.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think it was affected by the cameras.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

Cameras didn't have a thing to do with it. They were there and part of the background. I hope they didn't; they didn't me. They didn't affect the fairness.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

They didn't bother me. I was so absorbed, I forgot them. They were not very obtrusive.

Mr. James Shoults

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

I'd say very aware.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

Not any.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

I would say nothing. I haven' received any. A lot of people did know I was on the jury by seeing me on TV.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

This was really the first trial I ever saw, so I don't know. I don't think it had very much

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I don't think it had any effect.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I don't think there was any. Although there was a time when he kind of blew up; other than that, none.

*****

(NOTE: The "time" referred to involved a news photographer going where he wasn't supposed to go.)

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

It didn't have any effect.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

Oh. I think without.

Mrs. Sandra Wheat

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

I was not aware as long as they stayed behind the /bar/; when they didn't, they were obnoxious. More /aware/ as they walked back and forth to the judge's chambers. Wasn't aware at all during testimony. They made a noise, but it didn't bother me.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

None

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

None

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

I wasn't a witness, but I noticed a couple of times people looked around (at the jury, attorneys and jury). The ladies arranged themselves more decorously than otherwise.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

I wasn't a lawyer. One played it up and one was inhibited by it. But that's my opinion; not fact.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

I wasn't the judge, you'd have to ask him. As far as I could discern, none. I didn't know him; he's not from here.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

I must say some effect, and simply because one (attorney) was flamboyant and knew how to use it to his advantage. He might have done that anyway, but he used the resources at hand and used them to greater advantage than the other.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

It didn't bother me. It lent some excitement--and to some upset stomachs in the jury room, and hotel. You were more aware that you were doing something important /with the press coverage/. There was no ill effect, as far as I could discern; it didn't affect the judgment or the thinking.

Mrs. Kathleen Donskey (alternate)
She sat with the jury throughout the trial.

QUESTIONS TO BE ADDRESSED TO JURORS

If additional space is needed for your answer, please attach sheets and number each answer.

(Note for the observer: Please record whether the trial results in an acquittal, a conviction, or a mistrial)

1. To what extent, if any, were you aware of (a) television cameras, (b) radio equipment, and (c) still cameras during the course of the trial?

Very little.

2. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon your deliberations in the jury room?

Mine, none. I was an alternate.

3. To what extent, if any, did (a) television cameras, (b) radio equipment, and (c) still cameras in your receiving phone calls, letters, etc. during or after the trial?

No, I did not.

4. To what extent, if any, do you think that (a) television cameras, (b) radio equipment, and (c) still cameras had any impact upon the behavior of the witnesses?

Not much, if any, that I could notice. They forgot they were there.

5. What effect, if any, do you think (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of counsel?

Not any on Kirk. Eisenberg's probably like that on or off.

6. What effect, if any, do you believe that (a) television cameras, (b) radio equipment, and (c) still cameras had upon the behavior of the judge?

None.

7. What, if any, effect did (a) television cameras, (b) radio equipment, and (c) still cameras have on the fairness of the trial?

No effect, one way or the other.

8. Overall, if you had a choice, would you have preferred to be on a jury with or without (a) television cameras, (b) radio equipment, and (c) still cameras?

It didn't bother me, one way or the other. On some cases, if you feared retaliation, it might be different. I forgot they were there; it didn't affect me.

Washington State Superior Court Judges' Association Committee on Courts and Community, "Cameras in the Courtroom -- A Two Year Review in the State of Washington"

CAMERAS IN THE COURTROOM--
A TWO-YEAR REVIEW IN THE STATE OF WASHINGTON
A Project of the Washington State Superior
Court Judges' Association Committee on
Courts and Community

On September 20, 1976, the Washington State Supreme Court authorized "broadcasting, televising, recording, and taking photographs in the courtroom during sessions of the court. . ." (Code of Judicial Conduct 3A(7). It is noted that the authorization was granted by an amendment to the Code of Judicial Conduct not by court rule.) Since that time judges of the Washington State Superior Courts have had varied experiences with CJC 3A(7) and the news media. This report attempts to present an overview of those experiences and to recite certain relevant statistical information.

PRELIMINARY COMMENTS

All 111 Superior Court judges responded to the survey by the Washington State Superior Court Judges' Association's Committee on Courts and Community. Out of the 111 judges 41 reported experience with some form of camera or recording equipment in the courtroom during a court session. Seventy judges reported having no experience. The statistics are not clear as to how many judges refused to allow "cameras in the courtroom" when requested by the news media. There is evidence that some judges denied requests by news media for a variety of reasons. There is also evidence that judges allowed news media cameras in the courtroom, but, because of an objection pursuant to CJC 3A(7), the court restricted the news media from filming or photographing a defendant, witness or juror.

In most such occasions, the news media people decided not to proceed with the filming or photographing.

Judges reported that generally the more sensational criminal trials attracted the news media, but also there appears to have been coverage of a variety of other court matters. Examples of matters covered include sentencings, arraignments, contested divorce action, announcing an opinion in an affirmative action case, legal arguments concerning pornography, a dispute between state penitenitiary guards and Department of Social and Health Services, injunction relief, summary judgment regarding school issue, intra-political party dispute, motion calendar arguments and zoning disputes. Judges also reported there was coverage of a traffic appeal, a civil trial involving "clear cutting of timber", a civil trial involving "liability/damages of nine adjoining land owners versus an auto race track", and a variety of other situations when the news media gathered educational or background material.

At least 60 occasions of news media equipment in the court can be documented by the survey. Some judges reported TV cameras, still cameras, or recording equipment in the courtroom during a number of arraignments or preliminary matters without giving the exact count. The survey indicates at least 60 news media appearances in court and probably no more than 80 during the nearly two-year period of review.

NEGATIVE RESPONSES

Of the 41 judges reporting at least one experience with the news media equipment in the courtroom, only seven reported a negative experience.

One negative response stated the equipment was "obvious" but not noisy and that the equipment "had the effect of creating un-

realistic posturing and extended, long-winded arguments. Each counsel departed from the legal issues frequently in an attempt to upstage the opponent.. .recommend greater restrictions than presently in the Rule."

One comment considered negative in the statistics cited above stated that the judge had "mixed reactions" about the cameras in the courtroom on two different occasions.

A local bar association criticized one judge for allowing even limited TV camera and still camera coverage of a murder trial. Although the judge stated he did not "have any particular difficulty" he was concerned about the strong reaction by the bar association and indicated he may be slow to grant permission in the future.

A differentiation between extended hearings and brief hearings was made by one judge. He stated that during the long hearing which lasted for several days, one TV camera and tape recorder "were not disruptive" and that "all media personnel were cooperative."

On the other hand, he stated that on a brief hearing, "multiple cameras and recorders. . .did adversely affect the dignity of the court" and he indicated reservations on allowing media equipment in the courtroom during brief matters.

One judge commented that he believed the "movie cameras" in the courtroom during a trial (by approval of the Supreme Court before the amendment of CJ3A(7)) affected the verdict. After another experience recently with video tape recording equipment in the courtroom during a trial, the judge stated, "I have changed my mind." In addition, he commented that even if the cameras in the courtroom did affect the jury verdict, he was not sure that was inappropriate since

ke judicial decisions, jury verdicts should also be held up to close public scrutiny.

Another judge stated that TV cameras had been in the courtroom for 15 minutes for "background shots". The judge expressed an opinion that "the camera could and probably would be distracting to witnesses and jurors. I also believe jurors could be intimidated in a criminal case knowing defendant's friends could identify them from showing of film."

The final negative comment was an extended report of an experience during a bizarre murder trial which occurred shortly after Canon 3 was amended. The multiple news media people were criticized for squabbling about camera position and prerogatives. The judge was of the firm belief that the news media coverage did distract and had a detrimental affect on the proceedings.

The judge stated:

> "The continuous awareness of their continuous presence was observable. In the court's judgment, the conduct of counsel, jurors and witnesses were affected by the cameras in court. The court was affected and felt a continuous pressure from the newspaper reporters and TV cameras. Whether this was observable in the court's conduct has not been reported to me. I cannot define the reason for feeling the pressure. Perhaps it is derived from a fear of exposure to publicity. A judge has no script and must perform perfectly on the spot and fears humiliation from public exposure of a hasty and perhaps inappropriate ruling or comment. . .
>
> "Whether it was real or not, at 3:30 or 4 o'clock in the afternoon of each day, when all the cameras and reporters were absent from the courtroom, it seemed as if there was a general easing and relaxation of previous tension, and a sigh of relief seemed to breathe through the crowded court."

POSITIVE RESPONSES

On the positive side, 34 judges had a good reaction to news media equipment in the courtroom. Although the degree of enthusiasm

tried, the predominant comment was "no problem".

"Very successful, educational to general public, no distraction", recited one judge after two experiences with TV camera, radio and still cameras in the courtroom during murder trials.

Another judge, commenting on a first degree murder trial with a jury, (jurors not photographed), stated: "Camera noisy but did not cause problems."

TV cameras and still cameras were used during arraignment and other preliminary proceedings before one judge and it was reported, "It hasn't presented any real problems yet."

Also frequent comments by judges praised the cooperation given the court by the news media. Judges appeared to be very appreciative for this cooperation and "sensitivity".

Perhaps the most positive comment was made by a judge who tried a first degree muder case which attracted considerable public attention. The trial lasted for four weeks and the jury was sequestered. The judge reported that TV equipment with microphones were present daily in the courtroom and, in fact, the judge permitted the microphones to be wired in place for the duration of the trial. In addition to TV cameras, there were still photographers, sketch pad artists, and a second stationary TV camera. At the conclusion of the trial, the judge had this following comment:

> "Due to the length and amount of publicity this trial received, I was exposed to virtually every type of media 'onslaught' and feel that I gained a great deal of experience in this area as a result. Almost without exception, the media personnel were beyond reproach and the overall experience a very pleasant one. The few disruptions, if they can be called that, were clearly accidental and hardly worthy of mention. As a result

of this experience, I am 100% in favor of allowing the media access to the courtrooms under our current guidelines. I would suggest that any judge who anticipates having cameras in the courtroom, take the opportunity before trial to casually discuss the set-up with the camera men or reporters so that it is clear that both sides understand the other's position on that particular case. I did and found this to be very beneficial."

The succinct comment of one judge perhaps summarizes the general overall response. The judge stated: "Generally good experience--some problems."

GENERAL COMMENTS

No pattern of abuse or non-cooperation by the news media has developed and no inundation of state courtrooms by the news media has occurred.

Also, additional restrictive guidelines have not surfaced as necessary. Since the judge has the final say, open communication with the news media allows the flexibility to meet the unique needs of each situation. Judges have not reported a need for further guidelines than set forth in CJC 3 7(a) and news media people have generally preferred the freedom to deal directly with the judge on a case by case method.

To date, there has been no finding or serious claim that "cameras in the courtroom" actually prejudiced a party. A few judges have voiced the opinion, however, that such reporting has complicated the trial and caused distractions that may have prejudiced the defendant or state in a criminal trial.

Judges who have had experience with news media equipment in the court generally have less apprehension about disruption or distraction than those who have not had first hand experience. Also, most judges seem to accept the prospects of cameras and recording

equipment becoming more than a novelty in the courtroom. Judges, however, are concerned that in an arena which requires a judge to be the guardian of numerous fundamental rights of a defendant, one more distraction demanding the judge's attention increases the possibility of reversable error and unnecessarily intensifies the pressure on the judicial system.

On the one hand some judges believe it is good for the judicial image and it will help create a better public understanding of our court symtem. Others, however, claim the primary purpose of the courtroom is to provide each defendant with a fair trial and the education of the public or the increased news media access to the courtroom are secondary considerations.

It is this uneasy--but not necessarily unhealthy--tension between the fundamental right to a fair trial and the fundamental right of free press that causes most judges to adopt an open--wait and see--position.

CONCLUSION AND RECOMMENDATIONS

Two years have produced some initial data concerning the affect of news media equipment in Washington state courtrooms. Although it is too early to make a final judgment on the issue, the data at this point appears to support a continuation of allowing cameras in the courtroom.

The Courts and Community Committee should continue to monitor "cameras in the courtroom" activity and serve as an information gathering task force for trial courts. The committee should make periodic reports to the judges for information purposes and encourage continued consideration of this important constitutional matter.

Judge James A. Noe
9/11/78

APPENDIX

SURVEY SUMMARY TABLE OF CAMERAS IN THE COURTROOM

1.	Number of Superior Court Judges Surveyed and Responses Received (100%)	111
2.	Number of Judges Reporting No Experience	70
3.	Number of Judges Reporting at Least One Experience	41
4.	Number of Positive Responses (included in #3 above)	34
5.	Number of Negative Responses (included in #3 above)	7
6.	Number of Total Experiences Reported	60 - 80

WASHINGTON STATE SUPERIOR COURT JUDGES REPORTING AT LEAST ONE EXPERIENCE WITH NEWS MEDIA EQUIPMENT IN THE COURTROOM DURING A COURT SESSION:

1. Judge Gerry Alexander, Thurston-Mason County
2. Judge Frank Baker, Thurston-Mason County
3. Judge Dennis J. Britt, Snohomish County
4. Judge William L. Brown, Jr., Pierce County
5. Judge Robert J. Bryan, Kitsap County
6. Judge Warren Chan, King County
7. Judge Harold D. Clarke, Spokane County
8. Judge Carolyn R. Dimmick, King County
9. Judge James J. Dore, King County
10. Judge Barbara Durham, King County
11. Judge Marshall Forrest, Whatcom County
12. Judge Harry Follman, Skagit County
13. Judge William C. Goodloe, King County
14. Judge Bruce P. Hanson, Yakima County
15. Judge Alan Hallowell, Cowlitz County
16. Judge Hewitt A. Henry, Thurston-Mason County
17. Judge Howard Hettinger, Yakima County
18. Judge Nancy Ann Holman, King County
19. Judge Erle Horswill (deceased), King County
20. Judge Daniel T. Kershner, Snohomish County
21. Judge Bill Kohls, Okanogan-Ferry County
22. Judge Thomas Lodge, Clark County
23. Judge James I. Maddock, Kitsap County
24. Judge Jim Mitchell, Walla Walla County
25. Judge J. Dean Morgan, Clark County
26. Judge James A. Noe, King County
27. Judge Donald N. Olson, Spokane County
28. Judge Howard A. Patrick, Island-San Juan County
29. Judge Richard G. Patrick, Benton-Franklin County
30. Judge Norman W. Quinn, King County
31. Judge George H. Revelle, King County
32. Judge Jack Scholfield, King County
33. Judge Gerard Shellan, King County
34. Judge John Skimas, Clark County
35. Judge Horton Smith, King County
36. Judge Stanley C. Soderland, King County
37. Judge Fred Staples, Benton-Franklin County
38. Judge Waldo F. Stone, Pierce County
39. Judge David W. Soukup, King County
40. Judge Robert Winsor, King County
41. Judge Albert J. Yencopal, Benton-Franklin County

SUMMARY OF JUDICIAL DISTRICTS AND NUMBER OF JUDGES WITH EXPERIENCE:

Benton-Franklin	3
Clark	3
Cowlitz	1
Island-San Juan	1
King	16
Kitsap	2
Okanogan-Ferry	1
Pierce	2
Skagit	1
Snohomish	2
Spokane	2
Thurston-Mason	3
Walla Walla	1
Whatcom	1
Yakima	2
Total	41

Washington Bench-Bar-Press Committee,
Subcommittee on Canon 35, Report,
April 5, 1975

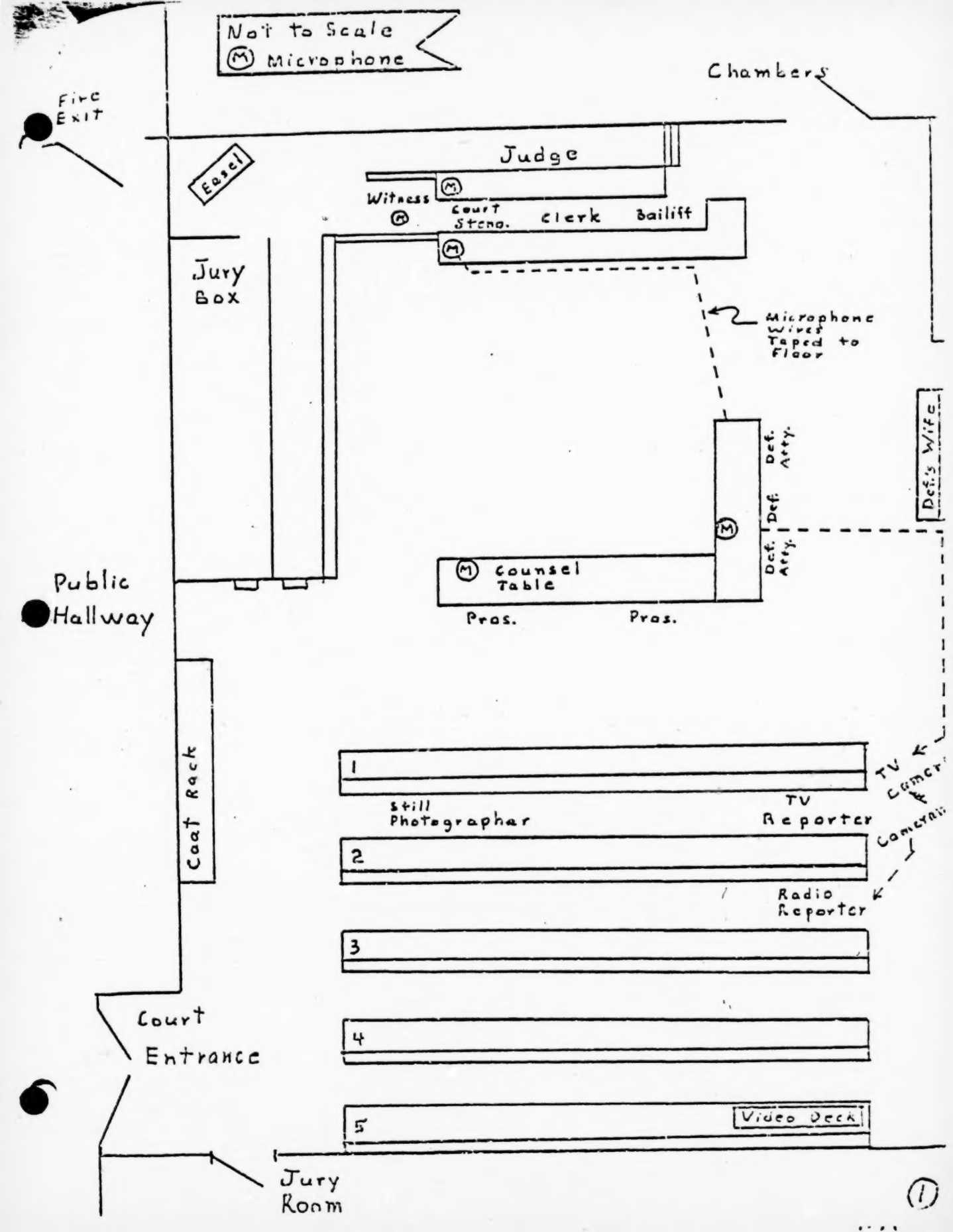
(Some of the pages in this report were partially cut off when photocopied. This is the form the report was in when received by counsel for the amici.)

BENCH-BAR-PRESS

-- Report of Subcommittee on Canon 35
-- For Review by Committee-of-the-Whole
-- April 5, 1975, Broadcast House, Seattle

TABLE OF CONTENTS

	Page
Diagram of Superior Court Room E-847	1
Narrative Summary	2
Reports by Test Participants	
-- Judge Stanley C. Soderland	7
-- Charles A. Burgeson, defense counsel	9
-- Bryan Johnson, KOMO Radio	11
-- George Diedrich, CCTV	13
Reports by B-B-P Committee Members	
-- Paul Conrad, newspapers	14
-- Jim Murphy, radio/TV	15
-- Charles H. Todd, attorney	20
Reports by Test Monitors	
-- George H. Bovingden, attorney	22
-- Howard Pruzan, attorney	25
-- Lawrence L. Longfelder, attorney	27
-- Gene Gisley, Bremerton Sun	30
Existing and Proposed Judicial Canons	
-- Original Canon 35	31
-- Present Colorado Canon 35	31
-- Present Washington CJC 3.A(7)	32
-- Test Committee Proposed CJC 3.A(7)	32
News Stories on Test Case	
-- Editor & Publisher, page 18, Dec. 21, 1974, Hu Blonc	33
-- Seattle Post-Intelligencer, Dec. 11, 1974, Frank Chesley	35
Illustrative Media Guidelines	
-- Newspapers	37
-- Radio & TV	38


Not to Scale
Ⓜ Microphone
Chambers
Fire Exit
Easel
Judge
Witness
Court Steno.
Clerk
Bailiff
Jury Box
Microphone Wires Taped to Floor
Def.'s Wife
Def. Atty.
Def.
Def. Atty.
Counsel Table
Pros.
Pros.
Public Hallway
Coat Rack
1
TV Camera
Still Photographer
TV Reporter
2
Camera
Radio Reporter
3
4
5
Video Deck
Court Entrance
Jury Room
(1)

NARRATIVE SUMMARY

At its meeting on November 10, 1973, the Bench-Bar-Press Committee of Washington voted to ask the State Supreme Court to "authorize a temporary abandonment of the rule against use of cameras in the courtroom to permit experimental test recording by television and radio of a trial or trials".

The Supreme Court, on November 28, 1973, adopted such a motion, and the then Chief Justice, Frank Hale, acting both in his court capacity and as chairman of the Bench-Bar-Press Committee, asked Presiding Judge Stanley C. Soderland of the King County Superior Court to select a criminal trial suitable for such a test.

Chief Justice Hale named a special Cameras-in-the-Courtroom Test Subcommittee to work with Judge Soderland. Members were:

Paul Conrad, Chairman
Judge Charles Horowitz
Judge Frank H. Roberts
Camden Hall
E. Glenn Harmon
James A. Murphy
Professor Don R. Pember
Henry MacLeod
Howard C. Cleavinger
Norman Heffron

Judge Soderland over the ensuing months sought a trial that would be appropriate as to public interest, and in which the parties and counsel were willing to waive assignment of error which might be based upon the conduct of such a test.

A trial meeting these criteria was located, and in November, 1974, the Cameras-in-the-Courtroom Test Subcommittee made its final preparations.

At 9:00 A.M., Monday, December 2, 1974, Judge Soderland convened State v. Fetter in Room E-847 of the King County Courthouse. The case, No. 69484, involved a charge of negligent homicide. Thomas Dean Fetter had been the driver of a car which struck a car on a rural highway near Enumclaw in south

King County on July 19, 1974. Allan Swanson, driver of the second car, was fatally injured. A passenger in the Swanson vehicle, Phyllis Haynen, was injured.

Assistant King County Prosecuting Attorneys Roy Howson and William Bailey represented the state; attorneys Byron Ward and Charles Burgeson of Auburn represented the defendant. Bailiff for the trial was George Bowman; the court reporter Anne Duncombe.

At the start of the trial microphones had been placed and a videotape camera set up in the second row of spectator seating, at the far right as the audience faces the bench. Operators were George Diedrich and Bill Galanti, both of CCTV, the closed-circuit television system at the University of Washington. Videotape recorders were placed on the rear benches, and the camera recorded essentially all the proceedings of the first day.

Also present for the opening session was Bill Ostlund of the Federal Way News, equipped with Fujica and Pentax single-lens reflex cameras which he operated from the second row of seating.

Prior to start of voir dire, Judge Soderland noted to all present the presence of the television camera, and explained that it was part of an experiment. He stated that the camera's presence and operation had no bearing on the trial, which was to proceed without regard to the experiment. He gave no further explanation then or later of the purpose of the test or what use might be made of the work product.

During voir dire one of the defense counsel once pointed to the television camera and commented that it represented an experiment, "but we are not here to experiment with the defendant's case, are we?". Other than this singular incident, the presence of the camera was not further mentioned by the court, counsel, jurors or witnesses during the remainder of the proceedings.

During the first afternoon as voir dire was completed and the first witnesses were called, Seattle Times photographer Bill Heyza replaced Bill Ostlund as the still photographer, employing Leicamats. Bryan Johnson of KOMO Radio taped portions of the proceedings.

Observers present on the first day included Judge B. J. McLean; Judge Frank Roberts; attorneys Howard Pruzan, George Bovingdon and Lawrence L. Longfelder; and press representatives Norman Heffron, James Murphy, Hu Blonk, Donald Pugnetti, Henry MacLeod, ~~and~~ Paul Conrad, Howard Cunningham.

On the second day (Tuesday, December 3), during which additional witnesses were called, a camera crew from KING-TV operated a film camera, filming those portions which reporter Julie Blacklow felt were potentially newsworthy. During the morning her cameraman was Phil Sturholm; during the afternoon Craig Johnston. The camera was located in the same second row position.

Still photographs were taken by Bob Miller of the Seattle Post-Intelligencer employing a Nikkon camera. Again Bryan Johnson of KOMO Radio taped portions of the testimony.

In addition to several of the observers who had been present on the first day, Don Pember and Roger Simpson of the University of Washington School of Communications were present, as was Gene Gisley of the Bremerton Sun.

On the third day, during which testimony was concluded, a crew from KOMO-TV employed an Orocon film camera, again capturing only such footage as seemed to the reporter John Sandifer to have news potential. Camera operator was Darrell Benedict. Howard Scott, KOMO-TV news executive, was also present.

Taking still photographs was Don DeRosa of The Seattle Times, using a single-lens reflex camera on a tripod.

On the final day of the trial, which included final arguments, instructions to the jury, and the verdict (guilty), the proceedings were filmed by a crew from KIRO-TV. Reporter was Craig Barrick and cameraman was Roger Gabhard, using a CP-16 film camera. Bryan Johnson was present to tape portions of the proceedings, but no still photographers attended this session.

Following their appearance on the stand, witnesses were interviewed as to their reaction to the cameras. These interviews were conducted outside the courtroom or following the conclusion of the day's proceedings. Test Subcommittee members and Judge Soderland shared the responsibility of conducting the questioning, some of which was recorded on television film. The following questions were asked:

1. What was your initial reaction when you saw television equipment in the courtroom?

2. Did you remain conscious of the operation of the television equipment during your appearance as a witness?

3. Were you aware of the operation of tape recorders by news media people during the trial?

4. Were you aware that still photographs were being taken by news media personnel during the trial?

5. Did any of this photographing or news recording distract you or interfere with keeping your full attention upon the trial? If so, what was it that was distracting?

6. Did the presence of the equipment and its use have any effect upon your conduct during the trial? If so, explain.

7. Did you observe any indication that the equipment and its use had an effect upon any other participant in the trial? If so, explain.

At the conclusion of the trial eleven members of the jury were interviewed by Judge Roberts, asking essentially the same questions. All of the juror interviews are recorded on television film.

Witnesses and jurors uniformly responded that they were not distracted by the presence and operation of the cameras, and that they saw no evidence that other trial participants were affected in any way by the cameras.

Judge Soderland also interviewed counsel, whose responses were recorded on video film.

Witnesses called were:

* Clyde Sprague, who lives near the accident scene;
* Bruce Sprague, son of Clyde Sprague;
  State Trooper Edward L. Smith, accident investigating officer;
* State Trooper E. J. Petersen, fatality investigating officer;
* Phyllis Haynen, passenger in the Swanson car;
* Mrs. Verle Brown, bartender at Carolyn's tavern;
  Frank T. Christman, who saw defendant in the tavern prior to the accident;
* Mrs. Carolyn G. Wicks, who heard defendant drive away from the tavern;
* Douglas Andrew, who saw vehicles leave the tavern;
  Theodore W. Couts, who saw the accident vehicles prior to the collision;
* Steven Coons, metalurgical engineer with a Kent laboratory;
* Dr. Terry Turner, a consulting physicist;
* Rob Wills, Enumclaw tow truck and storage yard operator;
  Thomas Dean Fetter, the defendant.

(*) Interviewed

...ers were:

1. Gerald Jensen
* 2. Susan Bruce
* 3. James Rasmussen
* 4. John Bernard
* 5. Robert Crandell
* 6. Larry Crane
* 7. Sandra Schimming
* 8. Edna Etchison
* 9. Clifford Rowe
* 10. Robert Stowell
* 11. Mary Hoover
* 12. Janice Mamgen

(*) Interviewed

c:a
2/20/75

JAN 27 1975

Superior Court of the State of Washington
for the County of King

Department of Presiding Judge

King County Court House
Seattle, Washington 98104

January 24, 1975

Mr. Paul R. Conrad
Chairman
Cameras-in-the-Courtroom Test Committee
18740 Pacific Highway South
Seattle, WA 98188

Dear Mr. Conrad:

Here is a brief report of my views of the recent trial which was covered by the press and cameras.

I think all judges and lawyers who viewed the case were surprised at the minimal or nonexistent distraction caused by the camera and news media. We have been trained to expect disturbances and distractions from such coverage of a trial. My feeling was that all of the participants in the trial went about their business and almost completely ignored the presence of news coverage. I was paying particular attention to the news personnel and camera in order to be able to make this evaluation. Accordingly, I looked at the camera many times when I was not otherwise occupied. However, I found that I completely forgot the presence of the news media as soon as I was called upon to take some action. Participants in a trial get so absorbed in what they are doing that the presence of a camera is going to fade into the background.

The use of this type of coverage gives the news commentator a much more forceful tool than is now available. The commentator can, of course, still editorialize and emphasize as is presently possible. For good or for bad, however, the news commentator will be able to make

a much stronger impression on the public with this type of coverage. I feel that in the long run this will be very good for the court system. It will be helpful to let the public see what actually goes on in a courtroom. The public will be more sympathetic with the courts and the problems when they understand them better. There are certain areas where the judge or a court rule is going to have to exercise control if news media are going to be allowed into courtrooms. For example:

1. Means of protecting the integrity of the jury process where publicity may cause prospective jurors to be prejudiced.

2. News media pooling arrangements.

3. Requiring news media to remain unobtrusive and to be ready to start on time or not at all.

4. Protection of certain types of witnesses such as sex offense trials and undercover agents.

5. Judicial control in cases where someone might want to use a trial simply as a vehicle for publicity, political or otherwise.

Very truly yours,

Stanley C. Soderland

SCS:mw

LAW OFFICES OF
Charles Allen Burgeson
CHARLES A. (JACK) BURGESON
BYRON H. WARD

405 AUBURN WAY NORTH
AUBURN, WASHINGTON 98002
(206) 854-5414
(206) 939-7950

FEB 4 1975

February 11, 1975

The Honorable Stanley C. Soderland
Presiding Judge of Superior Court of
the State of Washington for County of King
King County Courthouse
Seattle, Washington 98104

Dear Judge Soderland:

In reply to your letter of January 24, 1975, I am happy to respond with my comments regarding the recent trial wherein the press was invited to attend.

It is my personal feeling that the camera crews and the press personnel present in the courtroom during the entire period of the trial did not hamper me personally as a defense lawyer in my duties and job which I had set out to accomplish.

The cameras were of little consequence to me and I do not feel that their presence was disruptive nor did they disturb my concentration or train of thought during the trial.

As in most cases, many of us tend to have 20/20 hindsight and in that respect there are perhaps a few things I would have done differently in retrospect; however it certainly cannot be visited upon the press.

The quality of the trial was in my opinion in no way diluted by the presence of the press or the cameras. I felt that the court maintained complete control over the courtroom and proceedings at all times, and that counsel both for the state and the defense were able to present their cases without interruption or disturbance from any outside source.

(9)

One comment that I would make is in regard to whether or not juries are prepared to make this transition into the public eye.

With the upswing in crime as it exists today, and more particularly with the emphasis on crime prevention and deterrents, I feel it may be difficult for a juror (being a member of his or her local community) to sit on a criminal case of any magnitude without feeling the ever present pressure of public opinion regarding accused criminals.

Perhaps this may be of little import; however, I do feel that it is a matter which must be taken into consideration by defense counsel in preparation of his case.

In closing, I wish to thank you and the Bench-Bar-Press Committee for having afforded me the opportunity of being a part of this experiment and I sincerely hope that I was able to make some sort of contribution in this regard.

Very truly yours,

CHARLES A. BURGESON

CAB:fg

KOMO

RADIO 1000 • abc

Report on trial experiment:

At first I was among the skeptics. I was afraid that television cameras might distract, whereas radio equipment, being compact, could be secreted. Thus it was in the back of my mind that the experiment could hurt radio.

I also had passing fears that coverage of a criminal trial might hold more inherent risks than covering a civil proceeding.

My fears proved groundless. Not only did the jurors and attorneys indicate no ill effects, but the television cameras were all but unnoticed.

Can radio and television use the same basic court equipment?

Yes. With some advance planning. On the first day there was the video tape equipment. Radio was able to capture usable sound merely by putting a microphone to the earphones of the equipment. A more elaborate sound system might have yielded better quality, but it was air quality.

On the second and third days there was no problem simply hooking alligator clips to the headphone output of the Auricon campras. The sound was excellent. The only problem occured on day four. Channel 7 uses molded jacks on the headphones and there was no way to tap the sound. This could have been corrected easily if the equipment of all stations were examined prior to the start of the trial. The radio stations obviously depend much more on audio than television. When one can see a person talking,

FISHER'S BLEND STATION, INC.
100 FOURTH AVENUE NORTH
SEATTLE, WASHINGTON 98109
TELEPHONE (206) 624-6000

there is a natural tendency to help the person speaking by lip reading. This can't occur in radio.

There is no logical way to make all sound usable.

The judge will remember on one occasion it was necessary to pass a note requesting he lower one of the microphones.

That was only when the sound became totally unusable.

The court and bar will have to recognize that choice of samples for inclusion in broadcasts will be limited not only by the inherent interest of the material but also by the quality of sound.

The following would be needed in any continuing experiment.

A black box to mix the sound from microphones, four microphones, cables, and an adaptor box to handle the various types of output material.

It seems to me that a decision to go ahead with the project should include a decision by the stations to buy such equipment and warehouse it at the courthouse, rather than relying on each station to provide such equipment.

There may well be occasions on which only radio would be interested in a particular case, this would pose tremendous problems because of the lack of such gear at radio stations.

Any determination to go ahead should thus be for both radio and television for reasons of economy as well as the demonstrated fact that television does not include any special disruptive influence

Tape examples of sound are availabbe, but illustrate little other that purely technical problems which can be heard by closing one's eyes while watching the film.

UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON 98105

January 24, 1975

Mr. Paul R. Conrad
18601 Pacific Hgihway South
Seattle, Washington 98188

Dear Mr. Conrad:

The Closed Circuit Television Department at the University of Washington provided the television camera for recording the first day of the courtroom test on videotape. There were four hours of videotape recorded which was edited into a thirty minute summary of the day's events.

The overall evaluation from our standpoint of the recording session was good. We allowed ourselves two hours to transport equipment and set it up in the courtroom. This time turned out to be adequate, but if problems had developed during the set-up, we may not have been ready. So more time may be necessary for set-ups of this type. It took three people to get the equipment ready for the record.

Our biggest concern was placement of microphones. We used four microphones and had good pickup from all areas except the jury. No lights were used and the video quality was good. The trial was recorded on ½" Sony videotape.

The editing took two days to complete. The edited program consisted of shortened segments of the day's activity placed in chronological order.

Some comments concerning the project. First of all, pre-planning and preparation is essential. Coordination with other people involved is also necessary. It has to be determined if more than one group will receive an audio or video feed from the same equipment. Also, to make sure proper cables are available to go from one set of equipment to another.

Videotaping in the courtroom could be used for educational purposes as well as informing the public via newscasts. I believe the major use of television cameras will be by educational institutions with the commercial stations using film cameras. I also believe that the final product disseminated to the public or to students can be influenced by the people supervising and doing the editing.

I do favor the use of cameras and microphones in the courtroom. It will allow for a more accurate and an interesting way to cover the courtroom for the public as well as having a teaching tool available for schools.

Sincerely,

George Diedrich
Producer/Director

GD:mb

ALLIED DAILY NEWSPAPERS

18740 Pacific Highway South
(Sea Tac Motor Inn)
Seattle, Washington 98188

PAUL CONRAD
Executive Director
Telephone (206) 248-0770

February 20, 1975

MEMORANDUM TO : Cameras-in-the Courtroom Test Subcommittee

RE : Comments on the Test

By and large the presence of television and still cameras in the courtroom had no more impact on the jurors, witnesses, judge and counsel than the presence of other spectators and the accouterments of the courtroom.

Cameramen conducted themselves with decorum, and the equipment was not so noisy as to intrude on the proceedings. The test established that videotape cameras are virtually silent, while film cameras make an easily audible but not intrusive hum. The single lens reflex cameras used by the press photographers are surprisingly noisy, but not to the point of distracting.

The most serious flaw in the test related to television crews being set up and in place at the start of a session. On one occasion the camera was not in the courtroom at the time the judge was ready to assume the bench, and he delayed his entrance into the courtroom long enough for the camera to be set. On another occasion the operators were not at their places.

On one occasion the television reporter could be heard ordering the camera-man to turn the camera on for a bit of testimony which apparently the re-porter felt would be particularly significant. Audible orders like this could distract the jury and influence their attention to particular testimony.

Still photographers, the test revealed, are accustomed to taking a great number of exposures in their quest for a particularly good picture. Since this inevitably means that they are moving about -- albeit in a limited area of the spectator benches -- this activity can be distracting.

These observations suggest the need for ground rules to be followed by camera crews and photographers to minimize disruption of the court proceedings.

PAUL R. CONRAD, Chairman
Test Subcommittee
c:a

Washington State
Association of
Broadcasters

Tenth Floor, 1411 Fourth Avenue Building, Seattle, Washington 98101 Phone: MAin 2-2991

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Donald Whitman
KITN, Olympia
KITI, Centralia

Joe Chytil, ex officio
KELA AM-FM, Centralia-Chehalis

March 20, 1975

Mr. Paul Conrad
Executive Director
ALLIED DAILY NEWSPAPERS
18601 Pacific Highway South
Seattle, Washington 98188

Re: Bench-Bar-Press
Subcommittee on Canon 35

Dear Paul:

After attending the full State v. Fetter trial, and seeing the various participants' and monitors' reports, I find they leave very little to add by way of report that is new material. One thing is missing from other reports which I feel does deserve comment.

That is that the three commercial stations' TV news clips were made under very realistic conditions - almost more than realistic. First, reporters knew absolutely nothing of the facts of State v. Fetter except that it was a negligent homocide case arising out of an automobile accident. In "real life" reporting they would know a great deal more about the case before they went to the court in the first place - or they wouldn't be there. The film clips and news stories were obtained entirely from the actual trial itself. In my opinion the journalistic professionalism demonstrated by three unrelated (in fact competitive) TV crews, and story continuity with no background facts, speaks very highly for the quality and capacity of the electronic journalists to cover courts in progress.

(15)

Secondly, the three stations put their three stories "in-the-can" the same day as filmed just as they would in their daily reporting endeavors. The films were given no special editing because there was a test case to be carefully studied. For example, KING-TV's Julie Blacklow left the courtroom at 12:10 after her first morning, set-up immediately outside Judge Soderland's courtroom and "filed" (filmed) her report of that morning's court session. That "hallway" report is the filmed news clip.

Finally, rather than duplicate what the other monitors and participants have stated from their and my one trial experience, I submit the attached 1962 report on Colorado's Six Years' Experience without Judicial Canon 35, by Justice Hall of the Supreme Court of Colorado, 48 Am. Bar Association Journal 1120 (1962).

Yours very truly,

James A. Murphy
President

JAM/to

Colorado's Six Years' Experience Without Judicial Canon 35

In 1956, the Colorado Supreme Court adopted a rule permitting judges in that state, at their discretion, to permit the taking of pictures in court or the broadcasting or televising of courtroom proceedings. In this article, Justice Hall reports that the new rule is working well and that there have been none of the dire consequences that were predicted when the rule was adopted. The Colorado rule, of course, allows what Canon 35 of the American Bar Association's Canons of Judicial Ethics forbids. Canon 35 has been under heavy attack from some quarters, and a Special Committee of the Association is now studying the problem to determine whether the Canon should be changed.

by Frank H. Hall • *Associate Justice of the Supreme Court of Colorado*

MUCH HAS BEEN said and written pro and con concerning American Bar Association Canon 35 governing Judicial Ethics. It has been and remains the subject of heated debates ranging from matters of proper procedure to constitutional questions of free speech, free press, fair trial, public trial, etc.

Prior to February 27, 1956, Canon 35 was one of the Canons of Judicial Ethics of Colorado. On that date the Supreme Court of Colorado deleted Canon 35 from its Canons of Judicial Ethics and substituted therefor its Rule 35, which is a rule of court adopted for the guidance of all trial judges. It provides:

> Proceedings in court should be conducted with fitting dignity and decorum.
>
> Until further order of this Court, if the trial judge in any court shall believe from the particular circumstances of a given case, or any portion thereof, that the taking of photographs in the court room, or the broadcasting by radio or television of court proceedings would detract from the dignity thereof, distract the witness in giving his testimony, degrade the court, or otherwise materially interfere with the achievement of a fair trial, it should not be permitted; provided, however, that no witness or juror in attendance under subpoena or order of the court shall be photographed or have his testimony broadcast over his expressed objection; and provided further that under no circumstances shall any court proceeding be photographed or broadcast by any person without first having obtained permission from the trial judge to do so, and then only under such regulations as shall be prescribed by him.

Prior to replacing American Bar Association Canon 35, the Supreme Court of Colorado conducted hearings, saw and heard modern means of photography, recording and television. An account of these preliminary steps together with a survey of the legal aspects of the problem is reported in 132 Colo. 391, 296 P. 2d 465.

It is not my purpose to argue the legal phases of the problem—the rights of parties litigant, the rights of those engaged in gathering and disseminating news, the rights of witnesses and of courts, but rather to make a factual report of the actual operation under our Rule 35.

Colorado trial judges have for the past six years been governed by Rule 35. It is no longer in the experimental stages, but is a part of our judicial process. History records its working: the judiciary, lawyers, litigants, witnesses, news media agents and the public have for six years been exposed to its benevolence or malevolence.

Justice Douglas States the Objections to Rule 35

On May 10, 1960, I was privileged to hear the fourth address in the John R. Coen Lecture Series sponsored by the University of Colorado Law School at Boulder, Colorado. The subject "The Public Trial and the Free Press" the speaker, Mr. Justice Douglas of the

Supreme Court. (His ... was published in full in the ... 1962), *American Bar Association Journal*—16 A.B.A.J. 819—and ... December, 1962, issue of the *Mountain Law Review*, published by the University of Colorado.)

On that occasion Justice Douglas pointed out what he considered as the many grave dangers inherent in any modification or relaxation of Canon 35. With respect to the action of the Colorado Court in deleting Canon 35 and substituting our own Rule 35 he stated:

> With all deference to the Supreme Court of Colorado I feel that a trial on radio or television is quite a different affair from a trial before the few people who can find seats in the conventional courtroom. The already great tensions on the witnesses are increased when they know that millions of people watch their every expression, follow each word. The trial is as much of a spectacle as if it were held in the Yankee Stadium or the Roman Coliseum. When televised, it is held in every home across the land. No civilization ever witnessed such a spectacle. The presence and participation of a vast unseen audience creates a strained and tense atmosphere that will not be conducive to the quiet search for truth.

With six years of experience behind us, I think it may be stated that none of the ominous possibilities that filled Mr. Justice Douglas with so grave apprehension have come to pass in Colorado.

During that period there have been several television broadcasts of portions of criminal trials of wide public interest—the most notable that of John Gilbert Graham, who paid the supreme penalty for planting a time bomb on an airplane on which he had put his mother so she might enjoy a well-earned rest and vacation. She and forty-three others met their frightful deaths when the bomb exploded shortly after the take-off. Liberal portions of the trial proceedings were televised and viewed on numerous channels covering the Rocky Mountain area and other portions of the United States.

Canon 35 admonishes that such actions "are calculated to (1) detract from the essential dignity of the proceedings; (2) distract the witness ... giving his testimony; (3) degrade ... court; (4) and create misconceptions with respect thereto in the mind of the public. . . ."

Colorado Rule Preserves Courtroom Decorum

One may view and hear this telecast without a consciousness of degradation or distraction—for certainly it gives a true picture of the persons and things viewed and a true record of the voices and sounds. Truth is not *per se* objectionable. One can find nothing (and I have heard of nothing) indicating that there was a particle of detraction from the essential dignity of the proceedings. Nothing appears therein to indicate that any witness was distracted in giving testimony—no witness has been heard to complain. Did this telecast degrade the court? Those participating in the proceedings might well demand proof of such charges. The visual and auditory recording speaks the truth: it shows a competent judge and prosecuting attorney; competent defense counsel; witnesses; and a jury charged with a frightening task, all concerned with their public duties in an orderly, dignified, efficient and legal manner. Did it create misconceptions with respect to the court? Only true conceptions could arise from viewing the telecast. If misconceptions arose, they had their root in other sources—the telecast spoke the truth.

We have experienced no difficulties with reference to Rule 35. Though the rule has not received the blessing of the American Bar Association, we have not been urged by anyone in interest to modify or repeal any portion of it. Naturally judges make no complaint, for they have the discretion to grant or refuse permission to take pictures, broadcast by radio or to televise all or any portion of a court proceeding. If permission is granted, the trial judge has complete and final control over the methods pursued, the extent thereof and all matters in connection therewith. The rule provides ample protection for witnesses and jurors who object to photography or broadcasting. Up to the present time, no complaints have been received from litigants, lawyers, jurors or witnesses. The Colorado Bar Association, not integrated but an association composed of 85 per cent of the licensed attorneys in the state, has never expressed dissatisfaction with the rule during the time it has been in force. It is fair to assume that such an association would long ago have taken steps to restore Canon 35 if any of the dire forebodings predicted upon its abandonment had become manifest in Colorado.

During the past six years there have been hundreds if not thousands of photographs taken in courtrooms throughout the state—some during recesses of the court, others during the proceedings, a vast majority of them taken without the knowledge of any person in the courtroom. Such pictures appear regularly in the newspapers and form an integral and essential part of stories covering trials in matters of public interest. The pictures speak the truth. I have seen none to indicate that the trial was lacking in fairness, that the proceedings lacked essential dignity, that the court was degraded or any witness distracted. They do not depict a mob scene or indicate that any defendant was in need of "protection

Rogers-Hopwood, Inc.

Frank H. Hall is an Associate Justice of the Supreme Court of Colorado and was its Chief Justice in 1961. He is a graduate of Colorado College and of the Harvard Law School (A.B. and LL.B.) and has had thirty-six years' experience in the practice of law in Colorado.

from the mob"—one of the fears expressed by Mr. Justice Douglas.

Canon 35, it would seem, is designed to protect the judiciary against tyrannical and unscrupulous photographs, broadcasters, televisors and others who gather and disseminate news. Generally speaking, it would seem that those responsible in the news media of Colorado are not bent on doing any of the things which Canon 35 undertakes to prevent.

Press Has Not Abused Its Privileges

Conduct of the Colorado press and the courts in making use of the freedoms acknowledged by Rule 35 have, in my opinion, done nothing to indicate that the fears expressed by Mr. Justice Douglas are well grounded.

On the contrary, the press has promulgated its own rules for radio and television broadcasting of court proceedings. These rules might be regarded as canons of ethics for news media. They evince high ideals and standards recognized by the fourth estate in making use of the privileges recognized by Rule 35.

The rule provides for pooling of all broadcasts, and all stations are granted the privilege of participating, and the information obtained is available to all members of the pool for dissemination. Never is there more than one camera or recording device in any courtroom. The whole matter is under the control of the judge. Generally speaking our judiciary, and no doubt the judiciary of sister states, is composed of splendid, honest lawyers interested in preserving the dignity of the court, well qualified to resolve the problems presented and to guard against the sinister inroads dogmatically predicted by Canon 35. The final test as to whether a court is degraded or lacks essential dignity as the result of operation of the Rule rests with the presiding judge, and of course courts will not rise above the quality of the presiding judge. Canon 35 will not serve as a substitute for judicial ability, integrity and dignity.

The public is interested in court proceedings as evidenced by bar association sponsored television programs involving courtroom scenes and by commercial broadcasts of simulated trials. Teachers bring whole classes to observe the proceedings in trial courts and oral arguments in the Supreme Court. Capitol guides bring hundreds of tourists to witness such proceedings —I have never seen or heard anything from these persons that has been in the least distracting; they do not detract from the dignity of the proceeding or degrade the court. We enjoy having them and feel that they have gained something from their visit—we have lost nothing.

If thousands of others who are unable to attend court proceedings in person could see the same thing on television, it would serve to give the public a better understanding of the judicial process.

Colorado judges and those agencies which gather and disseminate news through the press, pictures, TV and radio have worked harmoniously for six years under Rule 35. The public response has been favorable. Protests are nonexistent. The judicial processes by virtue thereof should be better understood.

The press have been scrupulous in conforming to the judges' wishes and have exercised their rights and privileges in the best traditions of their profession. If they were to transgress, the judges have ample remedies available.

DEC 1 9 1974

LAW OFFICES OF
DAVIS, WRIGHT, TODD, RIESE & JONES
4200 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
(206) 622-3150

JAMES E. NEWTON
ARTHUR E. SIMON
DRAYTON F. HOWE
OF COUNSEL
HALL BAETZ
ALLEN D. CLARK
C. JAMES JUDSON
O. YALE LEWIS, JR.
STEPHEN K. EUGSTER
DAVID W. OESTING
JUDD KIRK
WILLIAM D. RIVES
NANCY P. GIBBS
DAVID C. GROFF
DAVID B. GOLDSTEIN
MARSHALL J. NELSON
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THOMAS G. THORBECK
KEVIN F. KELLY
DAVID W. THORNE
JANET L. GAUNT
STEVEN W. ANDREASEN

December 17, 1974

. Paul Conrad
lied Daily Newspapers, Inc.
740 Pacific Highway South
attle, Washington 98188

ar Paul:

reaction to the cameras in the courtroom at the State v. ter trial was basically favorable. I was surprised to d that the equipment for the TV, especially when they were ng film, was so quiet. I had expected a hum or something a buzz, which I did not notice at all. In fact the clicking a still camera by the press photographer seemed more noticeable.

did not see any effect on any of the participants with the sible exception that one juror seemed at one time to glance r. I was present one afternoon when Judge Soderland inter- wed witnesses after the jury had been excused for the day. y were uniform in saying that they did not feel any impact tsoever from the cameras.

de from the operation, there were two items which bothered a little. Hugh Blonk told me that in setting up the TV aratus one morning the cameraman was late and as a result, ning of the trial was delayed. I think that is inexcusable. the operators cannot make their arrangements without inter- ing in the trial in any way, including delaying it while y set up apparatus, they should be required to wait until next recess when the jury is absent.

other item was the young attorney for Fetter inquiring of cameraman whether he (the attorney) should stand here or e or somewhere else in interrogating the witnesses so the raman could get a better shot. This seems to me to come

December 17, 1974

close to the kind of posing or performing by the attorney which I think we are all opposed to. The trial should be entirely free of all implications of this sort.

I undertook to inquire of George Bovingdon what his reactions had been and he kindly passed along a copy of his letter to Judge Soderland on the subject which I enclose. George's last comment that it must be observed the photographers were on their best behavior is a proper caution. We did have trouble many years ago when, after we had a pretty good start in the King County court, one of the photographers (this was before the time of TV) had seen too much of "the front page" and came barging into the courtroom quite obstreperously giving a very bad impression to one of the judges who had been skeptical of the whole thing from the first. I am afraid there are some representatives of the media who become so much impressed with their own importance that they forget the necessary consideration for others. The boys and girls on the regular courthouse runs have learned the lesson but those going in on occasional special assignments sometimes forget.

Sincerely yours,

Dick Todd

Charles H. Todd

CHT:sb

Enclosure

...G. CLARKE, 1878-1945
...GE W. CLARKE
...D G. (TED) CLARKE, JR
ROBERT B. ALBERTSON
GEORGE H. BOVINGDON
GEORGE G. BOVINGDON

CLARKE, CLARKE, ALBERTSON & BOVINGDON
LAWYERS
1111 HOGE BUILDING
SEATTLE, WASHINGTON 98104

TELEPHONE
622-0494
AREA CODE 206

December 4, 1974

The Honorable Stanley C. Soderland
Judge, King County Superior Court
Room E942, King County Superior Courthouse
Third & James
Seattle, Washington 98104

Dear Judge Soderland:

You invited me to attend the trial of State v. Fetter for the purpose of observing from the vantage point of a civil defense attorney, the effects, if any, of having cameras in the courtroom.

I did not attend continuously as I explained to you upon your invitation. A point came when I discontinued attending for reasons which I think will appear. I first came into the courtroom on Monday, December 2, 1974, about 10:30 a.m. after completion of other business in the courthouse. At that time the court was engaged in voir dire examination of jurors. I remained until about noon. At 1:55 I returned to the courtroom and voir dire was continuing consequent upon the exercise of peremptory challenges. Simply in order to place the matter in focus, jurors 9, 11 and 12 were being repeatedly exchanged at this time. Ultimately juror No. 12, Mrs. Mangen, was seated. She appeared to be somewhat attentive to the camera when she took her seat in the box. I was present during the opening statements of counsel in the afternoon of Monday. It will be recalled that both counsel in opening statement, from time to time used the easel. I noted that in each instance where this was done, all the jurors swung around and paid very close attention to counsel. On resuming counsel's station in the opening statement, the jurors swung back but none seemed to turn anywhere except to focus attention upon the counsel addressing them. The remainder of December 2, 1974 was occupied with the testimony of Trooper Smith, during which time there were some still pictures taken. It would be

appropr[illegible]te here to state that the still pictures were the only pictures taken on Monday that made any sound whatever. The camera in use on Monday made no sound whatever, and I thought until the recess and talking to Mr. Murphy that it was not in use. The still camera made a click from time to time. I made a point of watching jurors and witnesses when these clicks occurred. At no time did I notice any reaction whatever. During the first part of the testimony of Trooper Smith, a number of exhibits were admitted, and I observed that the jury's attention was focused completely on this operation and none at all, that I could see, upon any camera.

On the morning of December 3, 1974, I arrived at the court about 9:50. Trooper Smith was still on the stand, and if my recollection is correct, he was on cross-examination. I noted at this time, as in fact I noted the previous day, that the witness Smith paid no attention whatever to cameras, listening to and watching only the counsel examining him. At 10:10 in the morning the witness, Clyde Sprague, was on the stand, a local resident who testified briefly. He appeared not to be even aware of the camera that was in the courtroom nor of the still photographer. He was followed by the witness, Phyllis Hamer (sp?), the passenger in the other vehicle. Possibly owing to her emotional state, but at any rate for whatever reason, she paid no attention to the camera. Pearl Brown certainly paid no attention to the camera. Her attention was mainly focused on fencing with defense attorney. She was followed by a man whose name I did not record, but who was in the same tavern the defendant was in, and offered to make up the 7¢ purchase price of the beer, and who testified to hearing statements made by the defendant Fetter. I could not see any effect or influence upon him by the cameras, either still or television. It should be noted that on the second day there was a different camera and that it did make a whirring sound to those close to it. I would estimate it might have been heard as far as the counsel table. I could not guess how much farther away it would have been audible. At any rate, it did not appear to affect anybody.

I concluded to discontinue attendance as I could not see that anything had occurred which would require close observation. I must say that I am surprised at what I did observe. I had always assumed that this activity would be disruptive in a courtroom, and consequently had been opposed to the idea. I do believe it must be observed that the people conducting the activity were on their best behavior and were, I thought, making an effort to be unobtrusive. Whether this would always be the case is open to question.

I hope these remarks may be of service to you.

Very truly yours,

Clarke, Clarke, Albertson & Bovingdon

George H. Bovingdon

GHB:jk

LAW OFFICES
MIRACLE, PRUZAN & NELSON
2349 FLOOR SMITH TOWER
SEATTLE, WASHINGTON 98104
(206) 624-8830

H S SANFORD
OF COUNSEL

January 3, 1975

The Honorable Stanley C. Soderland
Room E942 King County Court House
Seattle, Washington 98104

Re: Camera Coverage of Trial

Dear Judge Soderland:

At your request, I attended several sections of the trial of the negligent homicide case at which camera coverage, both still and television, was permitted on an experimental basis. The purpose of this letter is to report my observations and reactions.

Due to the nature of my schedule, most of the periods of my attendance were in connection with the preliminaries of the trial and jury selection. I also had an opportunity to watch the testimony of several witnesses giving rather brief testimony.

The most remarkable impression that I received was the apparent lack of interest and concern shown by the jury toward the picture-taking process. One would think that if any part of the trial was somewhat repetitious and uninteresting, the voir dire would so qualify. It seemed especially significant, therefore, that even during that portion of the trial I saw no members of the jury giving any more than a passing glance at the television camera or still pictures being taken.

It is a little difficult for one not more familiar with the case than I to evaluate the effect of the presence of the cameras upon witnesses, but I saw no noticeable difference in their demeanor or the way in which they responded to questions.

I assume that my sole role is to report on what I observed. However, I would make one caveat. The above observations are based upon the presence in the courtroom of only one television camera and not more than one or two still cameras. The situation might well be otherwise if an unlimited or larger number of television and still cameras were permited to operate at will.

I consider to be outside of the scope of my observations the intangible consideration of the chance that the presence of live press coverage would tend to increase the effect of public opinion or what might be discerned by the jury as public opinion upon jury deliberations.

If I can be of any further assistance, please do not hesitate to call upon me.

Respectfully yours,

HOWARD P. PRUZAN

HPP/rs

LAW OFFICES
DANIEL F. SULLIVAN

DANIEL F. SULLIVAN
LAWRENCE L. LONGFELDER
JOHN W. FLYNN
OF COUNSEL

HOGE BUILDING · 2-6 & CHERRY
SEATTLE, WASHINGTON 98104
TELEPHONE MUTUAL 2-8813

December 6, 1974

The Honorable Stanley Soderland
Judge of the Superior Court
King County Courthouse
Seattle, Washington 98104

RE: Haynen v. Fetter and State v. Fetter
Cause No. 783449

Dear Judge Soderland:

I am writing in response to your request that I provide the court with my view of the proceedings and the effect, if any, that I observed of the press coverage of the negligent homicide trial of Mr. Fetter.

My interest in this case stems from the fact that I represent Phyllis Haynen, who was a passenger in the vehicle driven by Alan Swanson, the decedent, which was hit head-on by Mr. Fetter. I was attending this trial for several days. We have commenced a civil action against Mr. Fetter for the injuries sustained by Ms. Haynen in the accident and I was interested in observing the testimony of several of the witnesses, including my own client. I was also interested in the theories of how the accident occurred as presented by his defense counsel.

My time records indicate that I observed this trial for approximately nine hours over the course of December 2, 3, 4 and 5. My observations included the voir dire of the jury, opening statements of counsel, testimony of several of the state's witnesses and approximately one-half hour of closing argument by deputy prosecutor Howsen.

In all candor, I was not particularly concerned with paying attention to the presence of the news media in the courtroom,

but more with the actual testimony and the proceedings. However, it did not appear to me that the jury had any great interest in the filming or in the still photographers after the initial jury selection had completed. I think there was a natural reaction on the part of several of the jurors (which I observed) to the television camera when those jurors were "on stage" and being directly questioned by one or the other of counsel. However, I do not feel that this reaction was untoward and rather was like anyone whose picture is being taken. I was generally impressed with the news media in their attempts to remain as unobtrusive as possible. I felt that the television cameras, using natural lighting, and the microphones caused absolutely no distraction during the trial itself that I was able to observe. I think particular care should be given to the taking of still photographs inasmuch as this requires the photographer to crouch or assume a position not natural to one viewing the trial and may require him to hold that position for several seconds while he adjusts his equipment to obtain a proper exposure, etc.

I appreciate this opportunity to comment on what I regard to be a very positive response by the bench-bar press committee in the area of news coverage of trials. I have long personally advocated open coverage of civil and criminal trials by photographers and/or television cameramen under a strictly controlled system to guarantee that the proceedings need not be disrupted any more than absolutely necessary. I feel that the proceedings I witnessed proved that this can be done in a responsible and unsensational manner and that the trial itself is not materially affected by such coverage.

I would like to stress, however, that I do not feel this would be the case if flash equipment or bright television lights were used which, I suppose, is obvious. However, with the techniques which make it possible to film in natural light, it is my judgment that the system is not adversely affected and the public's right to knowledge of courtroom proceedings is infinitely enhanced.

I would like to add one further comment. As your Honor knows I am chairperson of the Committees of the Young Lawyers Sections of the State and Seattle-King County Bar devoted to Law Related Education. In this regard, we encourage exposure by teachers of their students to courtroom situations, including the visiting of our superior and municipal courts by students. I think that the filming of proceedings is a step in the right direction for it enables a class to observe a trial without the necessary transportation and class disruption that the present system entails.

I would welcome the opportunity to discuss the matter further with the bench-bar press committee should the committee desire any further response.

Very truly yours,

Lawrence L. Longfelder

LLL/kc

THE BREMERTON SUN
545 FIFTH ST. BREMERTON, WASHINGTON 98310 • ES 7-3711

December 16, 1974

Paul Conrad
Allied Daily Newspapers
18601 Pacific Highway South
Seattle, WA 98188

Dear Paul:

I promised to report my observations on the Cameras-in-the-Courtroom Test and so I will, but on reflection I don't think I have many that will be very useful.

Firstly, I didn't think either the still cameras or television cameras proved to be any distraction to any of the principals in the trial. If any of the witnesses were even aware of the camera's presence, it was not obvious to me. And the jury evidently had become completely accustomed and oblivious to the photographers by the time of my attendance at the trial on its second day.

Certainly, all of the time-worn complaints that witnesses and counsel would play to the camera or would be intimidated by it or would be affected by it in some other ways were not true in this instance. I have the reservation, however, that this was not the kind of a trial in which those complaints would be likely to have much relevance.

Neither am I certain--and I suppose no one else is--that the success of this test case proves that a more typical or realistic kind of photographic coverage of trials is possible; but it certainly doesn't prove the contrary and that's probably enough success from this effort.

As an additional personal observation, I was sitting pretty near the TV camera on my first visit to the courtroom and its noise, while not very loud, made it difficult to understand some of the testimony. I suppose the use of motion cameras may require improvements in the sound amplification in the courtroom; but that's another matter.

I think the committee is to be congratulated on its work in this test and I'm looking forward to the report to be made by the committee--and to the January 10 meeting if it is possible for me to attend.

Yours truly,

Gene Gisley

30

Canon 35. Improper Publicizing of Court Proceedings.

Proceedings in court shall be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recess between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.

Canon 35. COLORADO.

Until further order of this court, if the trial judge in any court shall believe from the particular circumstances of a given case, or any portion thereof, that the taking of photographs in the court room, or the broadcasting by radio or television of court proceedings would detract from the dignity thereof, distract the witness in giving his testimony, degrade the court, or otherwise materially interfere with the achievement of a fair trial, it should not be permitted; provided, however, that no witness or juror in attendance under subpoena or order of the court shall be photographed or have his testimony broadcast over his expressed objection; and provided further that under no circumstances shall any court proceeding be photographed or broadcast by any person without first having obtained permission from the trial judge to do so, and then only under such regulations as shall be prescribed by him.

PRESENT CJC 3.A.(7):

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

Commentary: Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

PROPOSED AMENDMENT TO CJC 3.A.(7)

A judge may permit broadcasting, televising, recording, and taking photographs in the courtroom during sessions of the court, including recesses between sessions, under the following conditions:

(a) Permission shall have first been expressly granted by the judge and under such conditions as the judge may prescribe;

(b) The media personnel will not distract participants or impair the dignity of the proceedings; and

(c) No witness or juror in attendance under subpoena or order of the court shall be photographed or have his or her testimony broadcast over his or her expressed objection.

Washington trial covered by cameramen

By Hu Blonk

For the first time in the history of the State of Washington still and television cameras photographed a Superior Court trial, December 2-5.

Photography in the courtroom was allowed as a State Supreme Court-approved test sponsored by the Bench-Bar-Press Committee of Washington, to determine reactions of trial participants to the photo and television equipment operation.

The news media hopes it will lead to elimination of Canon 35 of the American Bar Association from the state's rules of court as stipulated by the high court.

The film and video tape obtained was not telecast nor the photographs published.

Witnesses were questioned by members of the bench-bar-press committee outside the courtroom after they left the stand to determine if they were affected by the news coverage. Presiding Judge Stanley C. Soderland himself questioned four after the second day's session, all interrogators using a set of questions the judge had prepared earlier.

No witness reported having been disturbed by the newsmen and equipment. Most said they hadn't noticed still pictures being taken, all said they hadn't been distracted or interferred with in giving their full attention to the trial, hadn't noticed any effect on other trial participants, hadn't been conscious of the operation of the TV equipment while waiting to testify or while testifying.

When questioned by Judge Soderland, the jurors reacted similarly they had not been distracted. Many didn't realize there was anything unusual about having cameras in the courtroom. The initial reaction of some is that it must be an important case.

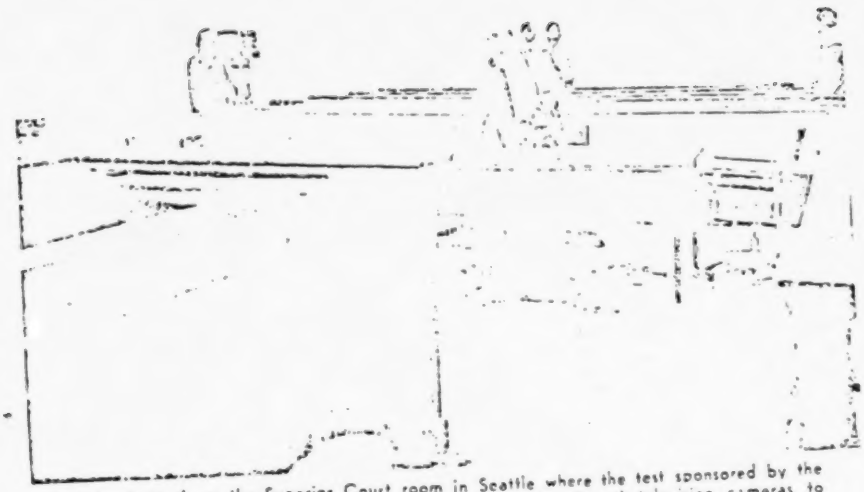
Three of the four lawyers were questioned. None saw an adverse effect on the trial. One felt witnesses might have reacted differently if they had not been advised by an attorney that the TV was not live.

Judge Soderland will express his comments in writing later.

The trial involved a young driver charged with negligent homicide because he had allegedly been drinking prior to his car crashing into another, killing the driver.

It was covered by photographers of the *Seattle Times*, *Seattle Post-Intelligencer* and a weekly newspapers, and by TV cameramen from the University of Washington and Seattle Stations KING, KOMO and KIRO.

(Hu Blonk is the retired manager editor of the Wenatchee (Wash.) Daily World and is a member of the Freedom of Information Committee of the Associated Press Managing Editors Association.)



This photo shows the Superior Court room in Seattle where the test sponsored by the Bench-Bar-Press Committee of Washington permitted still and television cameras to operate. The television camera location is at left; still photos were made from the back of the room. Other locations were: jurors behind rail at right; judicial bench at left and table used by attorneys where man is placing a glass of water.

The still shots were taken with 35mm. single-reflex cameras, with lenses ranging from wide-angle to telescopic, at the rear of the old-fashioned courtroom where five rows of wooden benches are provided for 60 spectators and witnesses. The photographers moved about at a minimum, shooting some of the time from standing positions. All photography was by natural light.

The TV cameras, both film and video tape, shot footage from the second row of seats, near a wall, and about 10 feet away from the nearest attorney. Two microphones were positioned at an L-shaped table occupied by two prosecution and two defense lawyers, but far enough away so as not to pick up confidential exchanges between lawyers on each side. A third microphone was placed near Presiding Judge Stanley C. Soderland and a fourth was tied to the existing mike of the public address system at the witness stand.

Radio also participated in the test, picking up sound from the TV cameras.

The first day of the four-day trial in the 30 by 50 foot courtroom was completely recorded on video tape, requiring a bulky camera on a large tripod, and six seats in the back row for two monitors and associated equipment. The set-up was intended to resemble the arrangement required to telecast a complete trial live.

The second, third and fourth days of TV coverage involved film cameras, also on tripods. They photographed only segments of the proceedings, which film later could be inserted in regular newscasts under early and late deadlines. Shooting was limited. For instance, KING-TV filmed about 10 minutes of the 3½-hour morning session of the second day (to be edited down to 2½ minutes) and about nine minutes of the 2½-hour afternoon session (to be cut to 1½ minutes).

Still photographers averaged 25 to 30 shots per session, these including close-ups of jurors, witnesses, the defendant, the judge and others. As in the case of TV cameramen, only one photographer was used in the courtroom at a time.

A report is to be prepared on the experiment for the Bench-Bar-Press Committee of Washington, which will consider recommending to the State Supreme Court that it remove the Canon 35 courtroom photography restriction from the state's rules of court. If it does so, it will send the report to the high court, possibly along with a set of guideliness on news media conduct in the courtroom. Several members of the Supreme Court are members of the Bench-Bar-Press Committee.

Newsmen on the committee anticipate that for the high court to approve courtroom photography it must have strong support from Superior Court judges and the Washington State Bar Association, both had observors at the trial. The bar group's stand on Canon 35 is a direct quots of the ABA no-photography position.

In arranging for the test, Supreme Court Chief Justice Frank Hale had told the Bench-Bar-Press membership that he wanted "the test to meet the test of a major trial". The defendant, judge and all attorneys agreed to the experiment in advance.

Judge Soderland told the jurors at the outset of the proceedings that "the news coverage allowed has nothing to do with this lawsuit", that it was "an experiment" and that he could have "picked any lawsuit" for the purpose.

The defendant was found guilty.

Seattle Post-Intelligencer
Wed., Dec. 11, 1974 S F:9

Frank CHESLEY
Television Editor

Courtroom TV?

A bit of journalistic history was made last week when television cameras, still cameras and a radio newsman's tape recorder were present at a King County Superior Court trial, in the case of the state vs. Thomas Dean Fetter, on a charge of negligent homicide.

Cameras and tape recorders are not at present allowed in Washington State courtrooms, but the Sate Supreme Court approved this one-time experiment for evaluation by the Bench-Bar-Press Committee and other legal, judicial and press groups.

After the four-day trial, with Presiding Judge Stanley Soderland on the bench, the jury found Fetter, 21, of Enumclaw, guilty in the July 19 highway death of Allan Swanson, 23, near Cumberland.

The controversy over the presence of cameras — still or movie — in courtrooms and legislative bodies has been long and sometimes bitter. After years of barring TV cameras from its deliberations (except for special, "public" events like the Watergate hearings), the U.S. Congress is now discussing the possibility of opening its chambers to the camera.

But Colorado is the only state which now allows still cameras and broadcasting equipment during court proceedings, with the approval of the trial judge. In 1970, public television aired a four-part series, "The City and County of Denver vs. Lauren R. Watson," the first trial ever fully televised. Colorado Supreme Court Associate Justice Frank H. Hall, writing in the American Bar Association Journal, said he found that cameras in no way have affected the dignity of the courts.

A similar change in Washington State's judicial canons has been under discussion for at least eight years, says James Murphy, executive secretary of the Washington State Association of Broadcasters. And it took nine months to find a suitable case, in which all the trial participants agreed to the presence of the cameras.

Visitors

The three Seattle network affiliates and the University of Washington filmed the proceedings on successive days, still photographers from The P-I, the Times and the Federal Way News were allowed to take pictures and KOMO radio's Bryan Johnson was on hand with his tape recorder.

Observers appointed by Judge Soderland monitored the proceedings, the jurors and all participants were interviewed and the stills and electronic journalism reports will be collected for study by the Bench-Bar-Press Committee. Paul Conrad, executive secretary of the Allied Daily Newspapers of Washington, is in charge of the experiment subcommittee.

Initial reaction to the test has been highly favorable. Judge Soderland, one of the most respected members of the beach wouldn't offer an opinion on cameras in the courtroom, but said, "There's a preconceived notion that it's inappropriate . . . I do favor considering a change."

He said "They picked a good trial and it went very well, very smoothly . . . Instead of a one-sided case, the witnesses were

(Continued)

—P-I Photo by Phil H. Webber

TV CAMERAMAN PAUL LITZ FOCUSED ON NEGLIGENT-HOMICIDE TRIAL

It was part of an experiment in superior court here

conflicting and the expert witnesses disagreed."

Defense attorney Byron Ward believes the presence of television cameras would have an effect on public attitudes. He said, "The fictional lawyers on television — Hawkins, Petrocelli — are a total distortion. If they acted that way in a real courtroom, they'd be thrown out."

And Murphy said, "Perry Mason isn't even close."

The other defense attorney, Charles Bergeson, said the camera's presence "would be better for the law. Lawyers would be better prepared."

KOMO news director Howard Scott also believes the test went well. "I was surprised at the lack of attention paid the camera. The disruptive factor is

witnesses were not ill-[illegible] dated and didn't play to the camera."

Need for Change

Murphy is the most vocal about the need for a change. "A courtroom is the last place a cam[illegible] cannot go," he [illegible] "Cameras can go to the moon, and do. They can go 10,000 feet under the sea, and do. But they can't go into the courts."

Both print and electronic journalists, of course, would like the judicial canons amended to allow cameras in courtrooms. But, as Murphy said, "There's a lot of emotion wrapped up in the judiciary and the bar, not much of it pro cameras. I'd say 90 per cent of the bar would be against it."

That opposition plus the resolution of several still unanswered questions, assures that the camera's presence in Washington State courtrooms is hardly imminent.

Are the clicking shutter and whirring movie camera gears any more distracting than then norm

shuffling and noise in courtroom? What should the ground rules [illegible] pool cameras, po[illegible]m and other guidelines.

And a perhaps unswerable question: W effects would a one-minute-30 second event news distillation of day's trial events h say, on an unsequest jury?

A negligent homi case is not the sor case that normally w attract extensive cover

And the Fetter ca self? It is something commentary on a soci that traffic fatalities worth, at best, a filler of paragraphs Fetter case, becau the negligent homi charge, got four graphs.

(Proposed)

GROUND RULES FOR PRESS PHOTOGRAPHERS IN COURTROOMS

1. The judge has absolute authority to direct whether photographs may be taken within the courtroom. The photographer should advise the bailiff, prior to the start of a court session, that he desires to take photographs. The bailiff may have prior instructions from the judge as to where the photographer may position himself. In the absence of any directions from the judge or bailiff, the photographer should remain behind the front row of spectator seats.

2. Unless the judge directs otherwise, no more than one still picture photographer is to be taking pictures in the courtroom at any one time. It is the responsibility of each photographer present at the opening of each session of court to achieve an understanding with all other photographers present as to which will function at any given time, or, in the alternative, how they will pool their photographic coverage. This understanding must be reached outside the courtroom and without imposing on the judge or court personnel.

3. The photographer's dress and equipment should not set him apart unduly from other trial spectators. Camera which operate without flash and with a minimum of noise should be utilized.

4. The photographer's movements in and out of the courtroom and while taking pictures should be unobtrusive. He should not, for example, assume body positions inappropriate for spectators.

ILLUSTRATIVE BROADCAST GUIDELINES

The following are submitted as illustrative of the type of voluntary constraints under which broadcast news journalists would operate. They are not submitted as being in final or for approval. With rapidly changing technology, etc, it is felt the best procedure is that followed by Judge Soderland in the test case, which was to leave the matter of placement, type of equipment, etc, up to the professional judgment of the broadcast journalists in attendance.

1. Officers of court. The judge has the authority to direct whether broadcast equipment may be taken within the courtroom. The broadcast news person should advise the bailiff prior to the start of a court session that he or she desires to electronically record and/or broadcast live from within the courtroom. The bailiff may have prior instructions from the judge as to where the broadcast reporter and/or camera operator may position themselves. In the absence of any directions from the judge or bailiff, the position should be behind the front row of spectator seats by the least used aisleway or other unobtrusive but viable location.

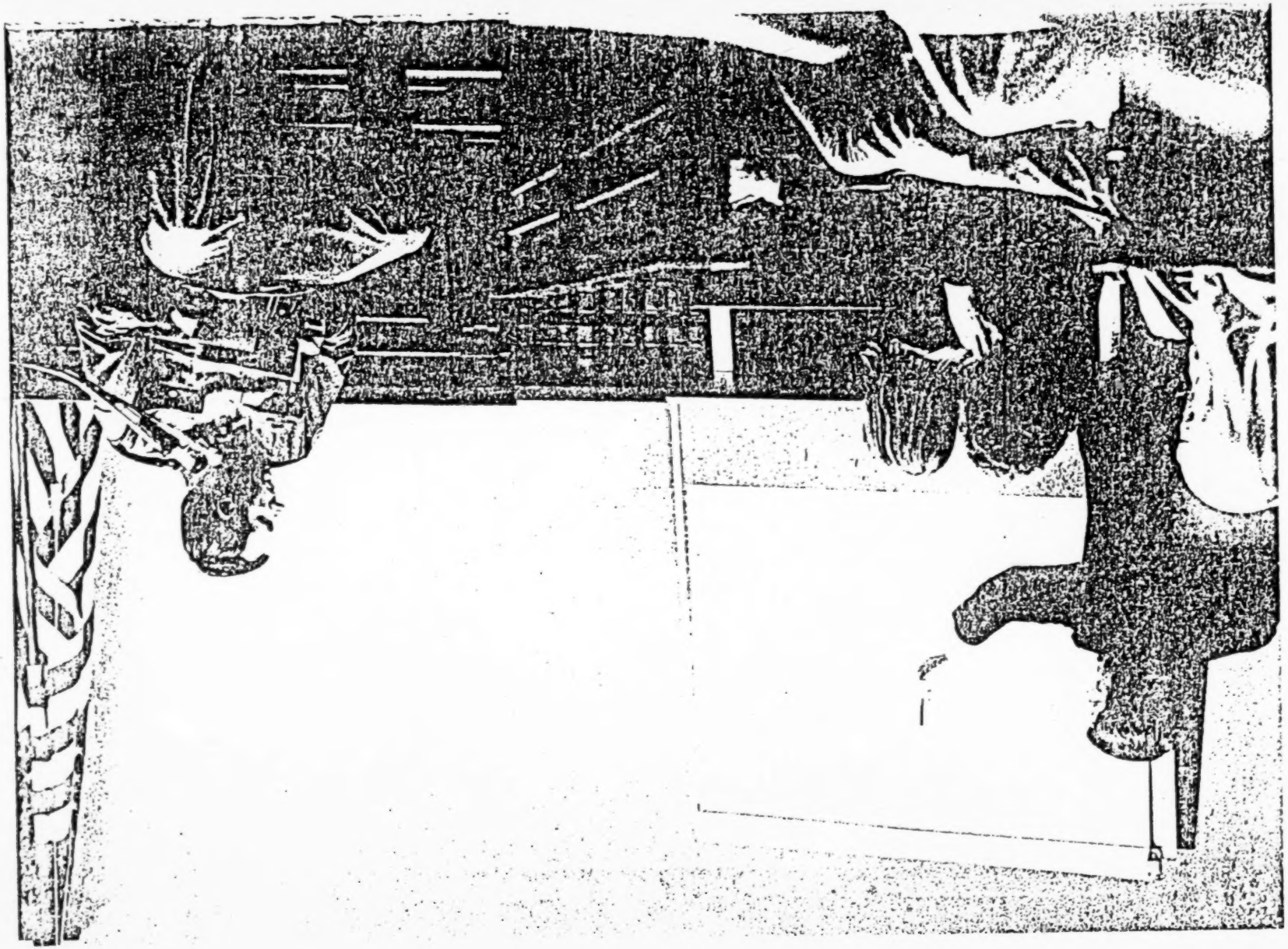
2. Pooling. Unless the judge directs otherwise, no more than one TV camera should be taking pictures in the courtroom (as presently constructed) at any one time. Where coverage is by both radio and TV the microphones used by TV should also serve for radio and radio should be permitted to feed from the TV sound system. Multiple radio feeds, if any, should be provided by a junction box outside of the courtroom such as in the adjacent public hallway. It should be the responsibility of each broadcast news representative present at the opening of each session of court to achieve an understanding with all other broadcast representatives as to who will function at any given time, or, in the alternative, how they will pool their photographic coverage. This understanding should be reached outside the courtroom and without imposing on the judge or court personnel.

   Broadcast coverage outside the courtroom should be handled with care and discretion, but need not be pooled.

3. Broadcast equipment. All running wires used should be securely taped to the floor. All broadcast equipment should be handled as inconspicuously and quietly as reasonably possible. Sufficient film and/or tape capacities should be

provided to obviate film and/or tape changes except during court recess. No camera should give any indication of whether it is or is not operating such as the red light on some studio cameras. No additional lights should be used without the specific approval of the presiding judge and then only as he may specifically approve as may be needed in the case of appellate hearings.

4. Decorum. Broadcast representatives' dress should not set them apart unduly from other trial spectators. Camera operators should not move tripod-mounted cameras except during court recesses. All broadcast equipment should be in place and ready to function no less than 5 minutes before the beginning of each session of court.



Judge Guy E. Humphries, Jr.,
Report on Pilot Project on
The Presence of Cameras
and Electronic Equipment
in the Courtroom

NINTH JUDICIAL DISTRICT COURT

PARISH OF RAPIDES

STATE OF LOUISIANA

TO: The Chief Justice and Associate Justices of the Louisiana Supreme Court

FROM: Guy E. Humphries, Jr., District Judge, Division B, Ninth Judicial District Court

REPORT ON PILOT PROJECT ON THE PRESENCE OF CAMERAS AND ELECTRONIC EQUIPMENT IN THE COURTROOM

This is a report pursuant to Pargaraph 11 "Duration and Evaluation" of the Order of the Louisiana Supreme Court of February 23, 1978.

Subsequent to the order, Judge Humphries attempted to obtain permission for camera and electronic coverage of every proceeding of every case that came up in his court.

Judge Humphries met with very limited success in obtaining permission for camera and electronic coverage.

The first matter wherein permission was obtained was State of Louisiana v. Henry H. Reid, Sheriff of Calcasieu Parish. Judge Humphries was assigned by the Louisiana Supreme Court to sit on the aforesaid trial. During the course of the trial the jury was taken out to where the Sheriff lived to view the property that he owned that was commonly referred to during the course of the trial as the "Sheriff's farm". The cameras accompanied the court personnel, the jury and a number of spectators to the property. Quite a bit of TV filming and still pictures were made

at the "farm". The TV station had a special showing of approximately 5 minutes of the film it had made. In addition to this permission was obtained from the parties and the attorneys for live TV and radio coverage and still photography of the rendition of the verdict by the jury. The cameras filmed the jury returning to the courtroom, after it had reached a verdict, and the colloquy between the judge and the jury pertaining to the finding of a verdict and the passage of the verdict sheet to the judge and then to the clerk and the reading of the verdict. As soon as this was done the film was rushed to the TV station and put on the air. The television station had previously informed its listeners that the verdict was to be recorded by the TV camera and any program underway would be interrupted for the showing of the rendition of the verdict.

After the jury had rendered its verdict the Court asked the jurors if they were in anywise affected by the camera or the fact that they knew before their deliberation, that they were going to render their verdict on TV camera and they all replied in the negative. Each juror was polled and stated that they had no feeling one way or the other about the cameras and electronic equipment. The attorneys were asked if they felt any distraction or disruption or were anyway affected by the presence of the camera and the electronic equipment and they all replied in the negative. The Judge had no feeling one way or the other about the presence of the cameras and the electronic equipment. Once the court came back into session, after its recess during the jury deliberation, the presence of the camera just slipped one's mind. There was no more awareness of the TV camera than there was of people in the courtroom.

This experiment indicated to the writer that many, many of the fears expressed in the past about the presence of cameras and electronic equipment in the courtroom were totally unfounded. This will be developed further in the report.

The only other success in obtaining camera and electronic coverage took place in Rapides Parish in the criminal trial of State v. James Williams. There was present in the courtroom one TV camera, a news photographer with a still camera, a news reporter with a small cassette tape recorder and microphones from the radio station. The cameras and operators and newsmen were spotted in the courtroom at the direction of the trial judge and there they remained until the trial was over.

There was a little more coverage in this trial than there was in the Reid trial. There was coverage of the closing arguments of the district attorney and defense counsel and the charge to the jury on the law by the judge, and the rendition of the verdict by the jury.

All of the equipment used was in accordance with the guidelines laid down by the Louisiana Supreme Court. The TV camera was out on the opposite side of the bar in one of the side aisles and was not moved ever.

The experiment went quite well, there was no interruption or distractions. The people coming in and out of the courtroom were much more noticable than the cameras and newsmen. The radio station carried the entire matter live from the courtroom. Surprisingly enough the majority of the comments were from radio listeners. People were not even aware that it was going to come on but when it did they were aware that it was a court proceeding and many just stayed by the radio to listen, even though it was approximately two hours. This matter was carried by the radio station live to the radio audience without any

interruptions, except for the station identification required by FCC.

The jury was aware that the filming would be done. After the finding of the verdict the jurors were polled as to their reaction to the camera and they all stated that they had no reactions to it. They stated they were not affected one way or the other by the presence of the TV camera. They were specifically asked if they thought that the fact that this matter was being covered by the television placed any greater importance on the case than they would ordinarily have and they all stated in the negative.

The judge had a discussion with the attorneys and the assistant district attorneys and the defense attorneys all stated that they were not at all affected by the cameras.

The charge to the jury was somewhat lengthy in that it was the serious crime of armed robbery. The Court was not aware of the presence of the cameras or the radio microphones during the time of the charge to the jury. Movement of spectators in and out of the courtroom is far more noticeable, subconsciously than was the presence of the TV camera and its operator. One has a subconscious awareness of the cameras in the courtroom equal to one's awareness of the people in the courtroom.

EVALUATION

It is the writer's opinion that this limited pilot project was very successful. The writer is of the opinion that cameras should be permitted in the courtroom at the discretion of the trial judge.

The Court determined that the many fears that are expressed about the presence of the TV camera are unfounded.

There was no loss of dignity or decorum in the courtroom whatever.

Neither the attorneys nor the judge tended to act or "ham it up" because of the presence of the cameras.

The cameras were not distracting in anyway. The lawyers argued to the jury and did not argue to the camera. The Court in giving the charge to the jury addressed the jury and not the camera.

The television is a part of the modern way of life. The writer sees the entrance of television cameras into the courtroom for the benefit of the viewing public as well as for the benefit of the court.

In both instances the parts of the trial that were broadcast were very objective. I feel that the news media can be more objective about reporting court proceedings if permitted to use cameras and electronic equipment.

We are presently using audio/vidio depositions in court. Most courts are going to electronic recording equipment in lieu of court reporters using shorthand or stenotype. At times photographs are made of a chalk board that is being used in the courtroom in order that the appellate court would have the benefit of drawings and diagrams put on chalk boards by witnesses.

This writer recommends another pilot project similar to the one that was authorized on February 23, 1978 with certain changes. The writer would like to have permission to conduct this pilot project again but without the requirement of obtaining the consent

of the attorneys or the parties or the victim. This writer also recommends that Paragraph 8 of the order be amended so that the film, vidio tape and still photographs or audio reproductions could be used for any purpose. If the Court is not willing to grant permission for a pilot project solely at the discretion of the trial judge, but is of the opinion that consent should continue to be obtained, the writer would still like permission to continue the pilot project.

It is felt that there was not sufficient coverage to do a full evaluation that the writer would like to do.

This writer is of the opinion that TV cameras can be placed in the courtrooms on wall mounts and that very few people would be aware of their presence. There are presently two courtrooms in the Rapides Parish Courthouse that have two surveillance cameras that are functioning at all times. These surveillance cameras are monitored in the Sheriff's Office as well as in the office of the jailer.

The writer does request permission to continue this pilot project as above recommended or under such other restrictions as the Court may impose.

Respectfully submitted,

Guy E. Humphries, Jr.

GUY E. HUMPHRIES, JR.
Judge, Division B
Ninth Judicial District Court

Media Advisory Committee,
Interim Report to the
Chief Judge of the New
York State Court of
Appeals, May 30, 1980

INTERIM REPORT

to the

CHIEF JUDGE

of the

NEW YORK STATE COURT OF APPEALS

by the

MEDIA ADVISORY COMMITTEE

May 30, 1980

On October 16, 1979, the New York State Court of Appeals, for the first time, invited television and press photographers into its courtroom in order to present to the public an actual court session.

Partly as a result of the uniformly favorable response to this experiment, on December 6, 1979, Chief Judge Lawrence H. Cooke appointed the Media Advisory Committee to study the issue and make recommendations to him, and then to the Court of Appeals and to the Chief Administrative Judge, with respect to proposed amendments to the Rules of Judicial Conduct governing broadcasting or telecasting from a courtroom.

Paragraph seven of subdivision (a) of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (22 NYCRR 33.3(a)(7)) now provides as follows:

> (7)(i) The taking of photographs in or of a courtroom, the broadcasting from a courtroom and the telecasting in or of a courtroom any time or on any occasion, whether or not the court is in session is forbidden, unless permission of the chief judge of the Court of Appeals is first obtained. However, this provision shall not apply to applications made to the appropriate court for photographing, taping, or videotaping by or on behalf of the parties to the litigation for the sole purpose of the litigation and not for public dissemination.
>
> (ii) In criminal matters, law enforcement and court personnel should not prevent the photographing of defendants when they are in public places outside the courtroom. They should neither encourage nor discourage pictures or televising but they should not pose the accused.
>
> (iii) The foregoing is not to be construed as a limitation upon the responsibility and authority of the chief judge of the Court of Appeals, the

> presiding justices of the Appellate Divisions or the administrative judges to formulate and effectuate such reasonable rules as may be necessary and proper to ensure that the coverage permitted shall respect the dignity, decorum and safety of the courthouse and the proper conduct of court business therein.

The Media Advisory Committee was appointed to ascertain whether the absolute prohibition of broadcasting contained in this rule should be continued, and, if not, to develop guidelines for authorized radio and television broadcasting and television and still news photography.

The initial meeting of the Committee was held on December 19, 1979, to organize the Committee and to decide upon the best method of accomplishing its task. At this meeting the Committee viewed video cassette excerpts of the October 16, Court of Appeals experiment and conducted a general discussion of the concept of media coverage of court proceedings.

The Committee decided to solicit the views of all interested groups and individuals concerning media access to courtrooms. Pursuant to this approach the Committee wrote to many groups and individuals and distributed a release requesting all interested persons and groups to submit written comments, personal, professional and technical, assessing the issue of access by the electronic and print/photographic media to the courts. The release stated that the Committee was particularly interested in opinions and expressions of view relating to:

(a) coverage of civil and criminal matters;
(b) attitudes of litigants, witnesses, lawyers, jurors, judges, prosecutors, media representatives, educators and the like;

(c) rules of procedure for governing access, should it be approved;
(d) commercial and educational differences, if any, in the use of the ultimate product of access;
(e) consent or notice safeguards, if any, and in what form;
(f) uniformity and application of technical specifications to existing conditions;
(g) pool coverage;
(h) cost factors and who shall bear the fiscal burden;
(i) any other aspect or perspective which would be helpful to a thorough consideration of the main issue of access at all and implementation if authorized.

The response to this release was voluminous and illuminating, demonstrating the wide and varied interest in and importance of this issue. The Committee received letters and memorandums from law school and college professors, bar associations, judges, court administrators, judicial associations, media representatives, lawyers, public officials of all kinds, various public interest groups, State and local agencies and private individuals. These materials reflected a wide variety of views, pro and con, with respect to the central issue of permitting media access, and provided excellent, valuable, technical and legal assistance concerning proposed guidelines.

The Committee also wrote to the administrative offices of the courts of all states which now permit television coverage or are experimenting with this coverage, requesting any reports, studies or evaluations which those states may have compiled. In response to this request the Committee received volumes of material from twenty-two states indicating their experience with media access to the courtroom.

After studying the materials received in response to its requests for information, the Committee met again on May 6, 1980, to discuss and adopt its position and formulate recommendations.

As a result of those deliberations the Media Advisory Committee recommends that the Rules of Judicial Conduct be amended: (1) to permit the broadcasting of appellate proceedings on a permanent basis, and (2) to authorize an experimental program giving judges discretion to allow audio-visual coverage of Civil Trials on a controlled basis in diverse locations in New York State, including urban, suburban and rural communities. Both changes should be subject to authorizations from the Chief Judge, or the Court of Appeals or whomsoever they shall delegate to insure control, centralization and consistency.

Since a successful experiment with respect to televising appellate proceedings has already been completed and evaluated, we believe that the Court of Appeals should now issue permanent rules governing appellate proceedings. Our study of the successful Court of Appeals experiment and the response thereto forms the basis of our recommendation to promulgate the following rules substantially adopted from the proposal submitted to us by the Association of the Bar of the City of New York, Special Committee on Communications Law, to whom we are very grateful for an excellent overall work product.

I.

GUIDELINES FOR ELECTRONIC AND PHOTOGRAPHIC RECORDING OF APPELLATE COURT PROCEEDINGS

1. Equipment and personnel.

(a) Two portable videotape electronic television cameras and two camera operators shall be permitted in any proceeding in any appellate court.

(b) Two still photographers and two still cameras with not more than two lenses for each camera and related equipment for print purposes shall be permitted in any proceeding in any appellate court.

(c) One audio system for radio broadcast purposes shall be permitted in any proceeding in any appellate court. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court facility. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the presiding judge or justice of the court hearing the appeal.

(d) Notwithstanding the provisions of (a), (b) and (c), above, the court may increase or decrease the amount of equipment that will be permitted into the courtroom on finding (1) that there is a need therefor because of special circumstances, and (2) that it will not impair the dignity of the court or the judicial process.

(e) Notwithstanding the provisions of (a), (b) and (c), above, the equipment authorized therein shall not be admitted into the courtroom unless interested members of the electronic media and interested print photographers shall have entered into pooling arrangements, for their respective groups, including the establishment of necessary procedures, cost sharing, access to material, and selection of a pool representative. The court may not be called upon to mediate any dispute as to such arrangements. In making pool arrangements, consideration shall be given to educational users' needs for full coverage of entire proceedings.

2. Sound and light criteria.

(a) Only television photographic and audio equipment and still camera equipment which do not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, television photographic and audio equipment shall produce no greater sound or light than the equipment designated in Appendix A annexed hereto; and still camera equipment shall produce no greater sound or light than a 33 mm. Leica "M" Series Rangefinder Camera.

(b) It shall be the affirmative duty of media personnel desiring to use equipment other than that authorized in these Rules or the appendix thereto to demonstrate to the Court adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light criteria enunciated herein. A failure to obtain advance judicial approval for equipment shall preclude its use in any proceeding.

3. Location of equipment and personnel.

Television and still camera equipment and camera personnel shall be positioned in such locations as shall be designated by the court. The areas designated shall provide reasonable access to coverage with the least possible intrusion into court proceedings. Videotape recording equipment which is not a component part of a television camera shall be located in an area outside the court facility.

4. Movement of equipment during proceedings.

Electronic, still photographic and audio equipment shall not be placed in or removed from the court facility and related personnel shall not move about the courtroom except prior to commencement or after adjournment of proceedings each day, or during a recess. Whenever possible television film magazines and still camera film or lenses shall be changed during a recess in the proceeding.

5. Courtroom light sources.

With the concurrence of the court, modifications and additions may be made in light sources existing in the facility, provided such modification or additions are installed and maintained at media expense.

6. Conferences of counsel.

To protect the attorney-client privilege and effective right to counsel, there shall be no audio pickup or audio broadcast of conferences which occur in a court house or

facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge held at the bench. Nor shall any chambers conference be filmed, recorded or broadcast.

7. Consent not required.

Electronic media or print photography coverage of appellate arguments shall not be limited by the objection of counsel or parties, except for good cause shown.

8. Appellate review.

An order including or excluding the electronic media from access to any proceeding, or upon any other matters arising under these standards shall not be appealable.

* * * * * * * * * * * * *

No experimentation with respect to media coverage of trial court proceedings has ever been conducted in New York, and, therefore, a controlled trial period of authorization is essential to evaluate effectively the impact of television upon all parties to litigation and upon the judicial trial process in this State.

The advantages of allowing the public to observe the proceedings in our trial courts outweigh the disadvantages articulated by those who oppose all access by the media. While the Committee recognizes and respects the existence of divergent views on this subject, it nevertheless concludes that the

issuance of authorization to proceed on an experimental basis is the most prudent and wisest course of action.

As indicated in the report of Association of the Bar's Special Committee on Communications:

> An experimental pilot program for televising trial court proceedings is the logical next step for New York State. The same reasons that justified television coverage of appellate arguments should lead to trial court coverage as well: (1) it will educate the public on how trial courts perform and how the rule of law operates at the trial level; and (2) it will serve to produce important educational materials for lawyers and law students.

Although the Committee recommends the implementation of an experimental program, it recognized and the entire Media Advisory Committee believes that an amendment to section 52 of the Civil Rights Law is necessary. Many believe it is necessary before any project at the trial level may proceed. Section 52 provides in pertinent part:

> No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting, or taking of motion pictures within this state of a proceeding, in which the testimony of witnesses by subpoena or other compulsory process is or may be taken, conducted by a court, commission, committee, administrative agency or other tribunal in the state. ...

A recent Attorney General's Opinion has interpreted this section as an absolute prohibition which cannot be waived by the parties to a proceeding. 1978 Op. Atty. Gen. 68 (August 15, 1978).

Some members of the Committee noted that this section may be subject to less absolutist interpretation and construction. Some also opine that the legislative enactment may even be in

conflict with the Court of Appeals' authority to approve standards and administrative policies with respect to the judicial branch, pursuant to section 28 of article six of the New York State Constitution. Thus, the Committee must leave to the Court's final interpretation and decision whether to proceed without a statutory amendment, if, in any event, the Court accepts our basic recommendations. It is the majority position of the Committee, however, that an appropriate amendment should be sought in all events even if an experiment is commenced without the statutory change. In this regard the Committee offers to draft proposed legislation if the Court agrees that this is necessary; for example "court" could be repealed and excised from the section.

We also recommend that the trial court experiment be limited to trials of civil actions at this time. The United States Supreme Court has recently granted a petition for certiorari and agreed to review a determination of the Florida Supreme Court upholding the constitutionality of televised coverage of criminal proceedings. Chandler v. Florida, ___U.S. ___, cert. granted, April 21, 1980. In Chandler, the Supreme Court will review the question whether media coverage of criminal trials violates rights to a fair trial and to due process under the Sixth and Fourteenth Amendments to the United States Constitution. 27 Cr. L. Rptr. 4029. Since an effective experiment must be based upon experience with actual trials, the coverage of criminal trials in New York now imparts too great a risk of possible irreparable error. To avoid this

risk, criminal trials should be excluded from the experiment until the Supreme Court has decided the case and issued its ruling and articulation.

Although the Committee was closely divided concerning whether the consent of the parties should be required, the majority agreed to forego this requirement prior to authorizing media coverage of civil trials during the experiment, at least. Experience in other states has shown that to require consent would practically eliminate the opportunity to conduct the experiment and would unduly restrict the discretion of the trial judge in this regard. Furthermore, since consent is not required for the print media, we do not think it is necessary, desirable or evenhanded for other media to be so encumbered.

The Rules of Judicial Conduct, when and if amended to permit media access to Civil Trials on a controlled experimental basis, should also provide that the discretion of the trial judge presiding shall control and that the experiment be conducted in diverse locations in New York State specifically designated for this purpose by the Chief Administrative Judge, including urban, suburban and rural communities. Overall, the experiment should be subject to authorization of the Chief Judge or the Court of Appeals or whomever they shall delegate to insure control, centralization and consistency. This experiment should be conducted in accordance with the following guidelines which were also based substantially upon those submitted by the

Association of the Bar's Special Committee on Communications with respect to whom we have already expressed our appreciation.

II.

GUIDELINES FOR ELECTRONIC AND PHOTOGRAPHIC RECORDING OF CIVIL TRIAL COURT PROCEEDINGS FOR EXPERIMENTAL PERIOD

1. Equipment and personnel.

(a) Two portable videotape electronic television cameras and two camera operators shall be permitted in any proceeding in any trial court.

(b) Two still photographers and two still cameras with not more than two lenses for each camera and related equipment for print purposes shall be permitted in any proceeding in any trial court.

(c) One audio system for radio broadcast purposes shall be permitted in any proceeding in any trial court. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court facility. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the Administrative Judge of the district in which the trial court is located.

(d) Notwithstanding the provisions of (a), (b) and (c), above, the court may increase or decrease the amount of equipment that will be permitted into the courtroom on finding (1) that there is a need therefor because of special circumstances, and (2) that it will not impair the dignity of the court or the judicial process.

(e) Notwithstanding the provisions of (a), (b) and (c), above, the equipment authorized therein shall not be admitted into the courtroom unless interested members of the electronic media and interested print photographers shall have entered into pooling arrangements, for their respective groups, including the establishment of necessary procedures, cost sharing, access to material, and selection of a pool representative. The court may not be called upon to mediate any dispute as to such arrangements. In making pool arrangements, consideration shall be given to educational users' needs for full coverage of entire proceedings.

(f) The pool operator covering the proceedings shall retain pool material for one year. The pool operator shall make available a copy of pool material at cost to educational users or to the Court of Appeals at their request.

2. Sound and light criteria.

(a) Only television photographic and audio equipment and still camera equipment which do not produce distracting sound or light shall be employed to cover judicial proceedings. Specifically, television photographic and audio equipment shall produce no greater sound or light than the equipment designated

in Appendix A annexed hereto; and still camera equipment shall produce no greater sound or light than a 35 mm. Leica "M" Series Rangefinder Camera.

(b) It shall be the affirmative duty of media personnel desiring to use equipment other than that authorized in these Rules or the appendix thereto to demonstrate to the Court adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light criteria enunciated herein. A failure to obtain advance judicial approval for equipment shall preclude its use in any proceeding.

3. Location of equipment and personnel.

Television and still camera equipment and camera personnel shall be positioned in such locations as shall be designated by the court. The areas designated shall provide reasonable access to coverage with the least possible intrusion into court proceedings. Videotape recording equipment which is not a component part of a television camera shall be located in an area outside the court facility.

4. Movement of equipment during proceedings.

Electronic, still photographic and audio equipment shall not be placed in or removed from the court facility and related personnel shall not move about the courtroom except prior to commencement or after adjournment of proceedings each day, or during a recess. Whenever possible television film magazines and still camera film or lenses shall be changed during a recess in the proceeding.

5. Courtroom light sources.

With the concurrence of the court, modifications and additions may be made in light sources existing in the facility, provided such modification or additions are installed and maintained at media expense.

6. Conferences of counsel.

There shall be no audio pickup or audio broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge held at the bench, without the express consent of all participants in the conference. Nor shall any chambers conference be filmed, recorded or broadcast.

7. Voir dire or pretrial hearings.

During the conduct of any voir dire or pretrial hearing at which the print media is ordered by the trial judge to be excluded, the electronic media shall also be excluded.

8. Reports.

For the purpose of further evaluation by the Court of Appeals, in any case in a trial court where coverage of any kind shall be afforded to the news media as authorized herein, immediately upon the conclusion of such case a report shall be filed with the Court of Appeals on the effect of such coverage by the trial judge, by each trial counsel who has been of record in the case and by the media representatives, if they so wish. Such reports shall state the general reaction of such participant to the media coverage, together with a state-

ment of such participant as to any changes in guidelines that might be suggested. The foreman of the jury shall also be asked his reaction by the trial judge, who shall make any response a part of his report. The reports shall be filed with the Clerk of the Court of Appeals on forms prepared by the Chief Administrative Judge of the Courts.

9. Location and coverage of trial courts during experimental period; selection of trials for coverage; appeals.

(a) The Chief Administrative Judge shall designate the county or counties where media coverage shall occur as authorized by these guidelines. The television, radio or print photography media may petition the judge presiding at the trial or special term in the designated county or counties for permission to cover specific civil trials in which they are interested, upon reasonable notice to the Administrative Judge. Permission for coverage shall be in the sole discretion of the judge presiding. An order including or excluding the electronic media from access to any proceeding shall not be reviewable upon appeal or in a collateral proceeding.

(b) In deciding which trials shall be televised, broadcast, and/or photographed, the judge presiding shall take into account the following factors: the type of case involved; whether such coverage would cause a substantial increase in the threat of harm to any participant in the case or would otherwise interfere with the fair administration of justice or materially interfere with the advancement of a fair trial or the rights of the parties.

10. Broadcasting by the media.

During the trial period authorized herein, there will be no restrictions on the broadcasting of public civil proceedings, including live broadcasts of same, except such restrictions as may otherwise exist in express provisions of law, as for example Family Court Act proceedings and the like.

11. Mandatory pretrial conference.

(a) Because of the novelty of a pilot program and the inexperience both of the judiciary and the media, a mandatory pretrial conference in each selected case shall be held among the judge presiding, attorneys and media personnel assigned to cover the proceedings, with all matters discussed to be consistent with the guidelines herein adopted. Objections, if any, to electronic or print photography media coverage shall be considered at this conference.

(b) At such conference the judge presiding shall review with all present the guidelines herein adopted and shall make such rulings as to the judge or justice may seem most appropriate.

12. Consent not required.

Electronic media or print photography coverage of civil actions during the experimental period shall not be limited by the objection of counsel, parties or witnesses, except for good cause shown.

13. Impermissible use of media material.

None of the film, videotape, still photographs or audio

reproductions developed during or by virtue of coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent or collateral thereto, or upon any retrial or appeal of such proceedings.

14. Duration of trial period.

The trial period shall run for one year or until at least twenty trial-court cases have been covered by television and print photography unless terminated or extended prior thereto by order of the Court of Appeals.

* * * * * * * * * * *

The Committee offers its availability to the Chief Judge and the Court of Appeals for continued service, monitoring and evaluation of reports of the participants in the experiment, should the Court approve it, and to make recommendations with respect to the desirability and content of permanent rules.

We express our gratitude to all who have helped us and especially to the Chief Judge and the Court of Appeals for their completed experiment and their continued leadership, and for this opportunity to participate in this project.

Respectfully submitted,

THE MEDIA ADVISORY COMMITTEE

A. Franklin Mahoney, Chairman
Sidney H. Asch
Joseph W. Bellacosa
Eve Bunting
Charles S. Desmond
Ellen Fleysher
William E. Hellerstein
Andrea Hyde
Louis J. Lefkowitz
Anthony R. Palermo
William S. Stevens
Edwin Torres

John J. Poklemba,
Counsel

APPENDIX A

VIDEO TAPE ELECTRONIC CAMERAS

1.	Ikegami	HL-77, HL-33, HL-35, HL-34, HL-51
2.	RCA	TK-76
3.	Sony	DXC-1600 Trinicon
3a.	ASACA	ACC-2006
4.	Hitachi	SK-80, SK-90
5.	Hitachi	FP-3030
6.	Philips	LDK-25
7.	Sony BVP-200	ENG Camera
8.	Fernseh	Video Camera
9.	JVC-8800 u	ENG Camera
10.	AKAI	CVC-150, VTS-150
11.	Panasonic	WV-3085, NV-3085
12.	JVC	GC-4800 u

VIDEO TAPE RECORDERS/used with video cameras

1.	Ikegami	3800
2.	Sony	3800
3.	Sony	BVU-100
4.	Ampex	Video Recorder
5.	Panasonic	1 inch Video Recorder
6.	JVC	4400
7.	Sony	3800H